TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 367.

THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING ET AL., PLAINTIFFS IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED DECEMBER 9, 1870.

22.

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INDEX.

	Original.	Print.
Summons	1	1
Complaint	2	1
Order granting leave to bring action	8	4
Answer	9	5
Exhibits annexed to answer:		
A	57	31
B	59	32
C	68	37
D	74	41
E	81	45
F	89	49
G	97	54
H	101	56
K	110	61
L	117	65
M	123	68
Notice of motion for judgment on the pleadings	130	72
Affidavit of C. C. Langdell	131	72
Notice of motion for stay of proceedings	133	73
Order denying motion for stay of proceedings	134	74
Order of substitution	135	74
Notice of appeal to general term, from order denying stay of proceedings	135	75
Judgment	136	75
Notice of judgment	139	77
Opinion delivered at special term	140	77
Affidavit of Stillman Foote	145	80
Proposed findings of fact and law	147	81
Exceptions	150	82

	Original.	Print.
Notice of appeal to general term from judgment	152	83
Decision of general term	153	84
Order for judgment to be entered as of October 6, 1868	154	84
Judgment	155	85
Notice of appeal to court of appeals from judgment	156	85
County clerk's certificate attached to return to court of appeals	156	85
Opinion at general term	157	86
Return	162	88
Writ of error	163	88
Citation and service	165	89
Proceedings in court of appeals	167	90
Judgment of court of appeals	168	90
Clerk's certificate	170	90
Proceedings in supreme court State	171	91
Judgment	171	91
Clerk's certificate	173	91

1 State of New York, supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, Frederick Clapp, John G. Tappan, Reuben A. Richards, Thomas Lovering, George A. Plummer, A. W. Chamberlain, C. C. Chamberlain, O. D. Kimball, John A. Andrew, George H. Plummer, George S. Reed, and William H. Gregerson; also, John Doe, Richard Roe, and James Jackson, whose names otherwise are unknown, but who pretend to exercise a franchise in this State, under its laws, as a corporation, by the name of the Northern Railroad Company of New York.

To the above-named defendants:

SIRS: You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you,
2 and to serve a copy of your answer on me, at my office in the State Hall, in the city of Albany, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint.

Dated May 28, 1867.

J. H. MARTINDALE,
Attorney General, for Plaintiff.

Supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
agst.
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, Frederick Clapp, John G. Tappan, Reuben A. Richards, Thomas Lovering, George A. Plummer, A. W. Chamberlain, C. C. Chamberlain, Otis D. Kimball, John A. Andrew, George H. Plummer, George S. Reed, and William H. Gregerson; also, John Doe, Richard Roe, and James Jackson, whose names otherwise are unknown, but who pretend to exercise a franchise in this State, under its laws, as a corporation by the name of the Northern Railroad Company of New York.

The People of the State of New York, by John H. Martindale, their attorney general, complain against the defendants, and aver:
3 That the Northern Railroad Company was a corporation incorporated under and by virtue of an act of the legislature of the State of New York, entitled "An act to provide for the construction of a railroad from the navigable waters of the great western lakes to Lake Champlain," passed May 14th, 1845; and said corporation constructed a railroad from Ogdensburgh to Rouse's Point, at an expense of about six millions of dollars.

That said road was opened in October, 1850, and continued to be used by the corporation until October, 1854.

That the capital of the said corporation was nominally two millions of dollars, but only about one million six hundred thousand dollars thereof was ever paid in.

That the residue of the money and means to build the road, was obtained upon credit upon bonds of two classes known as first and second mortgage bonds.

The first class, amounting to one million five hundred thousand dollars being secured by two mortgages upon the said railroad, and all the property, real and personal, of the corporation, and its franchises, to James Savage, George N. Seymour, and John James Dixwell, in trust for whomsoever were or should become holders of the first mortgage bonds, one of which mortgages is dated, and was executed, the eleventh day of February, 1850, and the other of which was dated, made and executed on the 29th day of April, 1850.

The second class of bonds was secured by two mortgages upon all the said property and franchises to George Curtis, William A. Wheeler, and Jabez C. Howe, the first dated and executed the fifteenth day of December, 1851, and the other April 7th, 1854.

Each of the said mortgages was duly recorded in the clerk's office of the counties of St. Lawrence, Franklin, and Clinton, within two months after the respective dates aforesaid. The said corporation was insolvent in October, 1854, and therefore surrendered possession of all its property, real and personal, to the trustees for the second mortgage
4 bondholders. That ever since October, 1854, the said corporation has remained insolvent, and neglected to pay its notes and other evidences of debt, and entirely suspended the ordinary and lawful business of such corporation.

That one of said second mortgage trustees, and the successors of the others, foreclosed their mortgages, by action in this court, and judgment of foreclosure in the usual form was duly rendered by this court on the 8th of April, 1856, pursuant to which all the said railroad, and all the property of said corporation, of every name and description, (except one bond for one hundred thousand dollars,) were sold and purchased by the second mortgage trustees, in trust for the second mortgage bondholders, subject to the first mortgage.

That the road was operated by the second mortgage trustees, under the supervision of this court, until the first day of August, 1865.

That by an act of the legislature of the State of New York, passed March 31st, 1857, entitled "An act to authorize the formation of a corporation in place of the Northern Railroad Company, dissolved," and an act revising and amending the same, passed April 8, 1864, provision was made for the due incorporation of the second mortgage bondholders, who were then, and *and* ever since said foreclosure have been, the real owners of said railroad, franchise, and property, so as to enable them, as a corporation under the general railroad law, to receive the title to, and take, hold, use, and manage the same.

That, pursuant to said acts, the second mortgage bondholders became, and were, duly incorporated by the name of The Ogdensburgh and Lake Champlain Railroad Company, and as such corporation, in that name, and pursuant to the express order of this court, made at a general term thereof, held at the court-house, at Ballston Spa, on the first day of August, 1865, they received a conveyance of all said railroad property and franchise and the possession thereof, and have ever since
5 carried on all the business of said railroad, and managed its af-

fairs, and have in all respects fulfilled the purpose for which the original franchise was granted by the State.

And the said attorney general doth further, in behalf of this State, show to the court, that an act of the legislature of this State, entitled "An act to amend the charter of The Ogdensburgh and Lake Champlain Railroad Company," was duly passed, and became a law on the 8th day of February, 1866, by which the legislature, among other things, provided, in order to increase the usefulness of said corporation to the public, and enable them the better to fulfill the purpose for which the franchise was granted, to issue and sell preferred stock to the amount of two millions of dollars, whereof one and one-half millions should be applied to the extinguishment of the said first mortgage, and the residue, (after paying its floating debt,) to the purpose of furnishing cars and locomotives.

And the said attorney general doth further give the court to understand and be informed that the persons hereinbefore named as defendants, with divers other persons, whose names are to him unknown, have heretofore, by the false pretence and allegation that said Northern Railroad Company was, and is, an actual, legal, and existing corporation, and owners of a railroad, and that it was only necessary for them to be furnished with money to obtain possession thereof, persuaded large numbers of persons who were stockholders of the Northern Railroad Company to pay to them large sums of money, amounting to four thousand dollars or over, and are continuing, and will continue, under the false pretence aforesaid, to obtain further sums of money from said former stockholders, unless restrained by the court. And that they levy such contribution upon stock which has been fully paid, and upon the pretence that the stock would be forfeited if the amount so called for was not paid, and did actually sell, or pretend to sell, at public auc-
6 tion, in the city of Boston, stock of said Northern Railroad Company, upon the pretence that such assessments had not been paid.

And the said attorney general doth further give the court to understand and be informed, the persons hereinafter named as defendants, with divers other persons, whose names are to him unknown, have usurped and used for more than twelve months last past, and still do usurp and use, without any lawful warrant or charter, the franchise of, being a body politic and corporate in law, the Northern Railroad Company, and by that name to sue, to issue and sell stock, pretending that the same is the stock of an existing corporation, and that such pretended corporation owns the railroad and property now in the possession of the Ogdensburgh and Lake Champlain Railroad Company.

And said defendants have held within this State, to wit, at Ogdensburgh, on the 7th day of March, 1866, a pretended election of directors of said Northern Railroad Company, and threaten to hold another on the third of June *of* next, at Rouse's Point, and have, in the name of the Northern Railroad Company and said Frederick Clapp, commenced an action in this court against the said Ogdensburgh and Lake Champlain Railroad Company and others, to obtain title and possession of the before-mentioned railroad and property, all which usurpations upon the people of this State tend to the injury and prejudice of the people, and tend to impair the benefit and advantage to the public of the said franchise as granted by this State to the said Ogdensburgh and Lake Champlain Railroad Company, and to depreciate the market value of their stocks, and so tend to hinder them from effectuating the beneficent purposes of the acts of the legislature of this State hereinbefore referred to.

Wherefore the attorney general, in behalf of the people of this State, asks the judgment of this court:

First. Adjudging and decreeing that said Northern Railroad Company has remained insolvent for more than one whole year; has for one
7 year and more neglected to pay or discharge its notes and other evidences of debt, and for more than one year has suspended the ordinary and lawful business of such corporation; has surrendered all the rights and privileges and franchises granted by any act of incorporation or acquired under any laws of this State, and has been and is dissolved; and that it be forever excluded from all corporate rights, privileges, and franchises.

Second. That the several persons named or referred to, as defendants in this complaint, have usurped and used within this State the franchise of a corporation, contrary to the laws of this State, to the injury of the people of the State, and in violation of laws; and that they, and each and every of them, be forever excluded, prohibited, restrained, and enjoined by the order of this court from usurping, setting up, or exercising any of the corporate rights, privileges, or franchises formerly possessed by said Northern Railroad Company, and that a temporary injunction to the above effect may be immediately granted.

Third. That said persons named as defendants, or referred to as such, be fined in the sum of two thousand dollars each for their said usurpation, pursuant to section 441 of the code, and may be compelled to pay the costs of this action.

Fourth. That the persons referred to as defendants, whose names are unknown to the attorney general, but who have joined the other defendants in usurping said franchise, claiming to be directors or other officers of the Northern Railroad Company, as a corporation under the laws of New York, may be summoned and made parties hereto as soon as the attorney general can ascertain their names and procure service upon them, and that the same relief be granted against them as hereinbefore is asked against the other defendants.

8 Fifth. That the people of the State of New York may have in this action such other, or such different, or such further relief as may be agreeable to law and equity.

J. H. MARTINDALE,
Attorney General, for Pl'ffs.

CITY AND COUNTY OF ALBANY, *ss:*

Stephen H. Hammond, being duly sworn, says: That he is deputy attorney general of the State of New York; that he has read the foregoing complain' and knows the contents; and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it be true.

S. H. HAMMOND.

Sworn before me this 28th day of May, 1867.

HENRY GALLEIN,
Notary Public, Albany, N. Y.

The attorney general having exhibited to this court the foregoing complaint, duly verified, and having applied to this court, pursuant to the statute, for leave to bring said action, and having stated in such application that he has reason to believe, and does believe, that the said acts of said company set forth in said complaint can be established by

proof, leave is hereby granted to the attorney general to bring the said action.

Dated May 29th, 1867.

A. B. JAMES,
Just. Supreme Court.

9 Supreme court, State of New York, county of St. Lawrence.

THE PEOPLE OF THE STATE OF NEW YORK, plaintiffs,
against
THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, Frederick Clapp, C. C. Chamberlin, and others, defendants.

The answer of the above-named defendants, The Northern Railroad Company, John L. Lovering, Frederick Clapp, and C. C. Chamberlin, upon information and belief, respectfully shows to this court, that the defendant, The Northern Railroad Company, was and is a duly incorporated company, incorporated under the laws of the State of New York, on or about the 14th day of May, 1845, and that the defendants Frederick Clapp, John L. Lovering, and C. C. Chamberlin, were and are stockholders of said company. That the original articles of incorporation of said company, duly executed in pursuance of the statute in such case made and provided, were duly filed in the office of the secretary of state of the State of New York. That, in pursuance of said articles and of said statutes, there was a large amount of the capital stock of said company subscribed for and paid in, and on or about the 15th day of June, 1846, thirteen directors of said company were duly elected; and said directors thereupon, soon thereafter, proceeded to locate the said Northern Railroad, making one of the termini thereof at Rouse's Point, in the county of Clinton, and one at Ogdensburgh, in the county of St. Lawrence, locating said road across and through
10 the counties of Clinton, Franklin, and St. Lawrence; and said directors and company thereupon immediately thereafter made, in pursuance of the statute in such case made and provided, by-laws for the government and control of said incorporation, a copy of which by-laws is hereto annexed, and forms a part of this answer, marked B, and said company, in pursuance of its charter, went on and built said railroad, from Ogdensburg to Rouse's Point aforesaid, and in the building thereof spent large sums of money, to wit, about $4,000,000; that a large amount of capital stock of said road was duly subscribed by a large number of individuals, and among them these defendants Frederick Clapp and C. C. Chamberlin; that the capital stock of said company was fixed at $2,000,000, and was duly subscribed for, and a large portion thereof—to wit, about $1,600,000—actually paid up in full; that these defendants, Frederick Clapp and C. C. Chamberlin, paid up their stock in full, and are, and ever have been, the bona fide owners and holders hereof.

That, on or about February 11, 1850, said company, by its proper officers, made and executed, in pursuance of the resolution of said company and the statute in such case made and provided, a certain mortgage upon its road and franchises, to James Savage, John James Dixwell, and George N. Seymour, as trustees, to secure the first mortgage bonds of said company, by said company then issued and to be issued, to the amount of one million five hundred thousand dollars, which said

first mortgage bonds were made payable in ten years from July 1, 1849, with seven per cent. interest, payable semi-annually; for the particular terms, conditions, and description of which mortgage, reference is hereby made to a copy thereof hereto annexed, marked "C," it being the first mortgage mentioned and referred to in the complaint in this action.

That, on or about the 29th day of April, 1850, the said company, by its proper officers, and in pursuance of the resolution of said company, and of the statute in such case made and provided, duly, and in due form of law, made, executed, and delivered to James Savage, John James Dixwell, and George N. Seymour, trustees as aforesaid, their certain other mortgage upon the road, property, and franchises of said company, to further secure the said one million five hundred thousand dollars of first mortgage bonds, herein before mentioned and referred to, which said mortgage was made payable at the same time of said mortgage hereinbefore mentioned; for the more particular description of which said last-mentioned mortgage, reference is made to a copy thereof hereto annexed and forming part of this complaint, marked "D."

And said defendants state that they have no knowledge or information as to whether the said first mortgage bonds were legally or actually issued, or whether they were disposed of to bona fide purchasers for value, or whether they were sold by said company for much less than their actual value, and ask that these matters may be determined by the proof presented on the trial of this action.

That the directors of said company, on or about December 15, 1851, executed what purports to be a further mortgage upon the road of said company and its corporate property and franchises, to George Curtis, William A. Wheeler, and Jabez C. Howe, to secure pretended creditors and guarantors, and to secure convertible bonds of said company to be issued, which amounts were indefinite; and providing in said mortgage, among other things, that in case of any failure by the company to pay principal or interest of said mortgage bonds, secured and to be secured by said mortgage, when due and demanded, and upon request in writing of any one of the holders of said bonds on which principal or interest is not duly paid as aforesaid, the trustees may and shall, for the term of six months, advertise all of the said property, real and personal, *ect.*, described in said mortgage, at the place and in manner as in said mortgage provided; that said mortgage bonds were to become due and payable, by the terms thereof, as set forth in said mortgage; and said mortgage, by the terms thereof, was made subject to said two mortgages hereinbefore described, securing said $1,500,000 of first mortgage bonds as aforesaid. For the full particulars of said mortgage and its terms and conditions, reference is hereby made to said mortgage, a copy of which is hereto annexed and forming part of this complaint, and marked "E."

That said company issued what purported to be, and what said company designated as, second issue of bonds from time to time, being the bonds intended to be secured by said second mortgage above mentioned, to a large amount, to wit, to an amount of more than $3,000,000; but these defendants, upon information and belief, say that said company did not have or receive the avails of all the said bonds, but, on the contrary, that a large amount of said bonds, to wit, over one million of dollars, were fraudulently and unlawfully issued, and were converted to the use of the directors of said road and the persons having charge of the same; and these defendants, upon information and belief, further

say, that in 1853, among the bonds so unlawfully and fraudulently issued, an amount of more than five hundred thousand dollars were issued by H. M. Holbrook, the pretended treasurer of said company, and the proceeds arising from the sale thereof were paid over to one Welcome Farnum, and used by him in the construction of, and for the benefit of, the Norfolk County Railroad, (then so called,) a corporation in the Commonwealth of Massachusetts, and for the mutual benefit of said Holbrook and said Farnum; and said Northern Railroad Company received no benefit of any kind therefor; and that all of said bonds not so converted, as hereinbefore alleged, and that were sold at all, were sold and disposed of by the then pretended agents and officers of said Northern Railroad Company, to the great advantage of said agents and officers, but at a ruinous discount and loss to said company. And these
13 defendants insist that if said corporation had authority to issue the said bonds (which these defendants deny) the bonds so converted and misapplied are not a valid or existing debt against the said corporation, nor against its effects, nor should or can the same be deemed a legal or equitable basis of a mortgage, or a debt to be secured by a mortgage given by said corporation; and these defendants further aver and insist that no mortgage given by said corporation, even if said corporation had authority to give the same, and the same was for any purposes a legal and binding mortgage upon any part of the company's property, should or can be deemed security for a greater sum than the amount for which said bonds were actually sold to purchasers as aforesaid.

And defendants further aver, upon information and belief, that, on or about the 7th day of April, 1854, the said Northern Railroad Company pretended, by its then pretended officers, as hereinafter set forth, to execute another mortgage to said Curtis, Howe, and Wheeler, also in trust, to further secure said pretended second issue of bonds, in which it is, among other things, stated as a reason for a further mortgage that, since the execution of the said first-mentioned mortgage, the said company had acquired "other lands and real and personal estate than such as were held and owned by said company at the time of said conveyance," (last above described,) reference being hereby made to a copy of the said last-mentioned mortgage, which is hereto annexed and forms a part of this answer, and is marked "Exhibit F," for the particular provisions of said mortgage.

And the defendants say, upon information and belief, that, in the year 1854, H. M. Holbrook had in his possession, as the pretended treasurer of said Northern Railroad Company, bonds of said company to the amount of one and a half millions of dollars, which were duplicates of the first issue of the bonds of said company, and also bonds of said company to the amount of three millions of dollars, which were duplicates of the second issue of bonds of said company; and said defend-
ants say, upon information and belief, that all of said duplicate
14 bonds of the first and second issue were fully executed and ready for delivery to purchasers thereof, and the said defendants are ignorant what has been done with said duplicate bonds by said pretended treasurer or the pretended officers and agents of said company, and asks leave to show what disposition has been made of said duplicate bonds on the trial of this action.

And these defendants further aver that, at the time of the execution of said second mortgage, it was corruptly and unlawfully understood and agreed between the said pretended president, William Raymond Lee, and directors of said Northern Railroad Company at the time of the execution of said mortgage, to wit, said William Raymond Lee,

George N. Seymour, Henry M. Holbrook, Edward Crane, James C. Rogers, Isaac Livermore, Charles J. Hendee, John L. Russell, Henry Van Rennselaer, Hiram Horton, James H. Titus, Sidney Lawrence, John A. Conant, and said trustees, that said pretended president and directors should execute said further mortgage to further secure said second issue of bonds, so as to cover all the property of any kind of said Northern Railroad Company, and to include everything belonging to said company; and that they should then soon thereafter give up possession of said mortgaged property to said trustees; and the defendants aver, upon information and belief, that said president and directors were elected and acted entirely in the interest of the said holders of said pretended second mortgage bonds as aforesaid, and for the express purpose of destroying the property of the stockholders of said company, whom they pretended to represent as directors as aforesaid, and that said last-mentioned mortgage was made, executed, and delivered simply for the purpose of putting the said road, its rolling stock, fixtures, franchises, and property into the hands of, and under the control of, the holders of said second mortgage bonds so fraudulently and unlawfully issued as aforesaid, and into the hands of the trustees of said second mortgage bondholders.

That, on the 26th day of July, 1854, in pursuance and fulfil'ment
15 of the intention hereinbefore stated, and in the interest of the second mortgage bondholders as aforesaid, and to carry out these foregoing improper, unlawful, and corrupt agreements, the following-named persons, to wit, William Raymond Lee, Francis B. Crowninshield, George M. Dexter, Isaac Spaulding, George W. Nesmith, Onslow Stearns, John L. Russell, Henry Van Rensselaer, John D. Judson, Sidney Lawrence, William A. Wheeler, and George V. Hoyle, claim and allege that they were elected directors of said company, although they did not own any of the stock of the said Northern Railroad.

That said pretended president and directors and trustees wickedly and unlawfully combined and conspired together, in pursuance and fulfil'ment of said fraudulent, corrupt, and unlawful understanding and agreement, and in violation of the rights of the said company and of its creditors, and in violation of the rights of the stockholders of said company, and for the purpose and with the intent on the part of said pretended directors, same not being stockholders of said road, and only interested, if at all, in said road as holders of said second mortgage bonds, to exterminate and destroy the capital stock of said road, and to make it valueless in the hands of bona fide holders thereof, as aforesaid, and also with intent to defraud the creditors of the said corporation, and also with intent to place the said corporate property into the hands of said trustees, to be used and managed for the benefit of said trustees and those who were interested with them, to the great damage of the stockholders of said company, as well as the creditors of said road; that, on or about the 6th day of October, 1854, in violation of law and in violation of the rights of said company, and of the creditors and stockholders thereof, as aforesaid, and in direct violation of the provisions of said two several mortgages given as aforesaid to secure said second issue of bonds, one John S. Eldredge, having become, as was alleged, a second mortgage trustee, appointed by the court in place of said Curtis, the said directors of said company, pretending to act
16 for said company by an instrument under the seal of said company, surrendered the possession of its road and property, as therein specified, to said Wheeler, Howe, and Eldredge; and in said deed of surrender, the execution of said two mortgages, to secure said

second issue of bonds are receipted, and particularly describe the property so surrendered; reference being hereby made to a copy of said deed of surrender, hereto annexed and forming a part of this answer, marked "Exhibit G," for the particular terms, conditions, and recitals in said deed of surrender contained.

And said defendants further aver that the several directors of said company, so pretended to have been elected, and acting as directors at the time of the execution of the said first mortgage to secure said pretended second issue of bonds of said company, and the persons who pretended to have been elected as directors of said company, and who were acting as directors of said company at the time of the execution of the said second mortgage, to further secure said second issue of mortgage bonds, as hereinbefore set forth, and the said several persons who were acting as, and who pretended to be, the board of directors of said company at the time of the execution of said deed of surrender of said road, and who surrendered said road and the property and franchises of said company to said trustees, Wheeler, Howe, and Eldredge, in pursuance thereof, were, and each and all of them were, at the time of the several pretended elections of said several persons to said positions as directors, and at the time of the pretended several official acts of said several persons as directors and officers of said company aforesaid, disqualified from holding said office of director of said company, in conformity with the statutes of the State of New York and of the charter and by-laws of said company, for the reason, among others, that no one of said several persons was, at the time of his said pretended election, a stockholder in said company, and no one of said several persons, at said several times, owned any of the capital
17 stock of said company, and none of the capital stock of said company stood upon the books of said company in the name of said persons, or in the name of any or either of them; wherefore defendants aver that said persons were not, in fact or in law, a legally elected board of directors of said company, and could not bind the said company by the said several acts hereinbefore mentioned, which said pretended directors attempted to do as such company, and that the two several second mortgages, or the two mortgages attempted to be given by said pretended directors to secure said second issue of bonds, were fraudulent and void and of no effect, and did not and could not bind said company; and that the pretended surrender of said corporate property to said trustees, long prior to the time any of said bonds so secured, or attempted to be secured, by said mortgages were by their terms due and payable, was and is an unauthorized act on the part of said board, had said board been duly elected, and had they been the legal representatives of said company; and that, as it was, said surrender was absolutely void, and transferred to said trustees no legal estate in said corporate property or franchises.

And the defendants, upon information and belief, say that, in the year 1854, the pretended president and directors of said Northern Railroad Company, and John S. Eldredge, and the trustees of said pretended second mortgage bondholders, acting wholly in the interest of the holders of the pretended second mortgage bonds, made and entered into a contract with Onslow Stearns and George W. Nesmith, directors of the Northern Railroad of New Hampshire, and the terms of said contract or agreement were that the said Northern Railroad of New Hampshire should have all the passenger and freight traffic coming from the said Northern Railroad Company of New York, for the term of sixty-six years; and in consideration thereof the said Stearns and Nesmith,

directors as aforesaid, should use their best exertions and influence to unlawfully and corruptly take the said Northern Railroad of New
18 York from the hands of the stockholders thereof, and place it into the hands and possession of the second mortgage bondholders. And the said defendants, upon information and belief, say that said contract and agreement was fully carried out, to the great benefit and advantage of the Northern Railroad of New Hampshire, and to the great damage of the Northern Railroad of New York, and that, by the wicked and unlawful combination and conspiracy on the part of the said pretended president and directors of said Northern Railroad of New York, and of said Stearns and Nesmith on the part of the Northern Railroad of New Hampshire, who were also holders of said pretended second mortgage bonds, the said Northern Railroad of New York was surrendered (a copy of the surrender is hereto annexed) into the hands and possession of the said pretended trustees, to the great damage of the stockholders of the said Northern Railroad Company of New York.

That immediately after the execution and delivery of said deed of surrender by said pretended directors to said Wheeler, Howe, and Eldredge, as hereinbefore alleged, said defendants, Wheeler, Howe, and Eldredge, in pursuance of said unlawful, corrupt, and improper understanding, took possession of the said road, and of all the property of said company of every name, nature, and form whatsoever; and said Wheeler and Eldredge, and the successor of said Howe, as hereinafter mentioned, continued in possession of said corporate property, said road, and all the real and personal property connected therewith, and the franchises of said company, and run and operated said road, and used up and received the income and profits thereof until about the first day of August, 1865, the time of the transfer hereof, as hereinafter set forth, to The Ogdensburgh and Lake Champlain Railroad Company, a pretended company formed, and who have possession of said railroad, as hereinafter set forth, and converted to their use, as trustees as aforesaid, all of the personal property of said corporation received by them from said company as aforesaid.

19 That said trustees took possession of a large amount of personal property that said mortgages did not purport to and did not cover, and which was not embraced in said deed of surrender, and not transferred to them by said transfer, among which was a large quantity of wood, and other personal property not in existence when said last mortgage was executed, and not covered by the terms thereof, had the same been a legal and binding mortgage even, which said property amou'ted in value to from $75,000 to $100,000, and converted the same to their own use as truestees as aforesaid.

That said trustees also took possession and converted to their own use, as trustees as aforesaid, the Crawford and Chamberlain bond, hereinafter particularly set forth and described, being the one hundred thousand ($100,000) dollar bond described in said complaint, and received upon said bond large sums of money, to wit, at least $50,000 of principal interest upon said bond, or upon a bond or bonds, or notes or other evidences of debt and securities substituted and given by said Crawford and Chamberlain as collateral to or in lieu thereof, which sum belongs of right to the said defendant, the Northern Railroad Company, and not to the said trustees, or to the mortgage bondholders; that said trustees represent that said Crawford and Chamberlain bond was executed upon and grew out of the following facts, to wit: On or about the 16th day of December, 1851, the said Northern Railroad Com-

pany loaned to John H. Crawford and Philo Chamberlain $100,000, and took the bond usually called and known as the "Crawford bond," payable at a then future time, and to secure the payment of the same, then, or soon after, took a mortgage from said Crawford and Chamberlain to secure the payment of said $100,000, as therein agreed upon, upon some vessels, propellers, and other property, which said bond was made payable to one William T. Eustis, (but in trust for said company,) said Eustis being the treasurer of said Northern Railroad Company at the time.

20 And defendants further aver, upon information and belief, that at the time of the transfer from said trustees of said second mortgage bonds to the Ogdensburgh and Lake Champlain Railroad Company, hereinafter mentioned and hereinafter particularly set forth, to wit, about August 1st, 1865, said trustees transferred and delivered said Crawford bond, so called, and the mortgage given to secure the same, and all of the collateral securities taken by the said trustees upon the same, and all evidences of debt taken in lieu thereof, and that the said Ogdensburg and Lake Champlain Railroad Company, and the said defendant, George M. Barnard, in trust for said last-mentioned company, now have possession of the same, and have received some part of the sums due or secured thereby, to wit, about $20,000; and they claim and insist that they lawfully hold and are entitled to the said bond and securities of right.

And defendant further say that said Ogdensburgh and Lake Champlain Railroad Company and said Barnard pretend that said bond and other securities of said Crawford and Chamberlain, and the sums now due thereon, as well as the sums that have been paid thereon, or on the securities or evidences of debt growing out of the same, passed to the said trustees by said mortgages, or one of them, and by said deed of surrender, and by a foreclosure of said mortgages, (which foreclosure is hereinafter particularly set forth,) and that the same was or were transferred to said Ogsdensburgh and Lake Champlain Railroad Company, or to said Barnard, in trust for said company, by said second mortgage trustees, on or about the first day of August, 1865; but defendants aver that the said bond of Crawfor' and Chamberlain, and the mortgage given therewith, and all sums received thereon, and the securities or evidences of debt arising from the same, or in lieu thereof, belong to and are the property of this defendant, the Northern Railroad Company, and the stockholders of the said Northern Railroad Company, and that said company is entitled to all sums heretofore received

21 by any of said parties thereon, or which may be hereafter received thereon; and these plaintiffs aver that said bond, or the mortgage given to secure the payment of the same, or the securities, if any, taken in lieu thereof, never passed to said second mortgage trustees by either of said mortgages, if either or both of said mortgages should be decreed legal and valid, or were embraced in any mortgage given by the said Northern Railroad Company, or passed by any surrender of said company to said trustees, or by any foreclosing of any of said mortgages, as hereinafter mentioned, and aver that they are not and never were legally transferred to said Ogdensburgh and Lake Champlain Railroad Company, or to said Barnard, as trustees as aforesaid, and aver that said Ogdensburgh and Lake Champlain Railroad Company, or said Barnard, as trustees as aforesaid, or either of them, have no right, title, or claim thereto, but that same belong to said Northern Railroad Company.

And defendants further say that said Crawford and Chamberlain

debt was not sold on the foreclosure or attempted foreclosure of the mortgage or mortgages so pretended to have been given by said Northern Railroad Company to said second mortgage trustees; but, on the contrary, as these defendants are informed and believe, the court, by an order, prohibited the sale of the same, on such foreclosure, and that the same was never sold on any judgment of foreclosure.

And these defendants aver that, in May, 1855, upon proceedings had, it was and is claimed that said William Raymond Lee took the place of said Howe as trustee in said second mortgages, and to represent in all respects said Howe; and that, in November, 1855, one Anthony C. Brown, by and upon proceedings had, it was and is claimed took the place of said Lee as trustee as aforesaid, and succeeded to all the rights, powers, duties, and obligations of said Howe and Lee as trustees as aforesaid; and that one William C. Brown, upon proceedings had, it was and is claimed was appointed trustee in place of said Anthony
22 C. Brown, and succeeded to all the rights, powers, and duties of said Anthony C. Brown as trustee as aforesaid.

That from the time of the appointment of John S. Eldredge to succeed said Curtis as trustee as aforesaid, to the time said William C. Brown came in as trustee as aforesaid, said road was managed, run, and controlled by said William A. Wheeler and John S. Eldredge alone; and during said time said other trustees had no part in the management or control of said road, and, as defendants are informed and believe, have received none of the property of said Northern Railroad, and none of the income and profits arising from the management and control thereof. That from the time of the appointment of William C. Brown as the successor of Anthony C. Brown, said road was run, managed, and controlled, and the income and profits thereof were received by said Wheeler, Eldredge, and W. C. Brown.

And these defendants further aver, upon information and belief, that, on or about the 20th of Feb., 1856, and after the said trustees had been in the actual possession of said road, in violation of law as aforesaid, for eighteen months or more, the said trustees, Wheeler, Eldredge, and A. C. Brown, caused a pretended foreclosure suit to be commenced upon the two mortgages given to secure said second issue of bonds as aforesaid, in the supreme court of the State of New York, wherein the said William A. Wheeler, John S. Eldredge, and Anthony C. Brown were named as plaintiffs, and the said The Northern Railroad Company was sole defendant. That the summons and complaint in said action were served upon, as these defendants are informed and believe, one Samuel C. F. Thorndike, who was the pretended treasurer of the said company in 1854, elected by said illegal directors as aforesaid, and who was not in 1856, and had not been for a long time prior thereto, an officer of said company, and who was, on the 27th day of February, 1856, the day upon which he was served with said summons and complaint, as appears from the judgment-roll in said foreclosure suit, in the
23 actual employ of the plaintiffs in said action to foreclose said mortgages, to wit, said Wheeler, Eldredge, and A. C. Brown, trustees, etc.

That these defendants, or any of the other stockholders of said company were not, nor was any director or officer of said company, served with or notified of the commencement of said action, and said Northern Railroad Company did not make any appearance in said action, except as hereinafter set forth.

And defendants aver that said plaintiffs in said foreclosure suit ordered and directed said service to be made upon said Thorndike, one

of their own employees, for the express purpose of preventing notice to said company, or to these defendants, or to the several stockholders thereof, and to prevent an appearance in fact in said suit on the part of said company or on the part of any of the stockholders thereof, and in pursuance and fulfil'ment of the unlawful and corrupt agreement and understanding as hereinbefore alleged, by which said second mortgage trustees were to obtain and keep possession of said road and corporate property, in violation of the rights of the stockholders of said company, and for the purpose, on the part of the said second mortgage trustees, to foreclose the said mortgages and defraud the said stockholders of their rights and interest in said road. That none of the creditors of said company were made parties to said action to foreclose said mortgage, although, as plaintiffs are informed and believe, there then were judgments upon the record against said company, to the knowledge of the plaintiffs in said foreclosure suit.

That to more effectually carry out the attempted unlawful foreclosure of the said interest of the stockholders of said company, said Wheeler, Eldredge, and A. C. Brown employed a law firm at Malone—to wit, Messrs. Parmelee and Fitch—to appear for the defendant, the said Northern Railroad Company, in said action; that said trustees caused said attorneys to be employed through their employee, said Thorndike, and said trustees paid said attorneys for so appearing from the
24 funds of the road, then in the hands of said trustees as aforesaid; that said Parmelee and Fitch were never authorized to appear for the defendants, the said Northern Railroad Company, and appeared simply at the instance and request of and for the benefit of the plaintiffs in said action to foreclose—to wit, said trustees—and could not and ought not to be allowed to prejudice or foreclose the rights of said company or the stockholders thereof by their said acts.

That an order and judgment of foreclosure was entered on the 8th day of April, 1856, in said suit in the supreme court of the State of New York, in the fourth judicial district, without any reference to a referee therein, decreeing a foreclosure of said mortgage and a sale of the corporate property and franchises of said road, reference being hereby made to a copy of said order hereto annexed and forming a part of this answer, and marked "Exhibit H," for the full particulars of the provisions of said order, judgment, and decree.

That the said William C. Brown, therein mentioned as referee, was, at the time of the commencement of said action, and at the time of the making of said order appointing him as referee, as in said order mentioned, and at the time of the pretended sale of said mortgaged property, in pursuance of said decree, as hereinafter set forth, the law partner of James C. Spencer, the attorney of record of said plaintiffs in said foreclosure action, and was a son of said Anthony C. Brown, one of the said plaintiffs, and was subsequently, as hereinbefore mentioned, appointed as trustee in the place of the said Anthony C. Brown.

And these defendants further aver that said judgment and decree was and is void and of no force, validity, and effect, as against these defendants, and that the said referee therein acquired no right to sell said property in pursuance thereof for the reason, among others, that there was no service on the said defendant, and that the court acquired no jurisdiction over the said defendant in said foreclosure suit, this defendant, The Northern Railroad Company, by the pretended ser-
25 vice or appearance hereinbefore alleged; that the said judgment and decree was procured by fraud and in violation of, and with the express purpose of defrauding the said stockholders of the said

company; also that said decree does not follow, in the manner of and time of advertising the mortgaged property, the express stipulations contained in the said mortgage, to wit, in the number and location of newspapers wherein said mortgage sale, in case of sale, should be advertised, and in the length of time the same should be so advertised.

That said decree, in violation of law, provided that said plaintiffs, as trustees, might purchase said property upon said sale, and hold the same as trustees as aforesaid, which power said trustees did not possess, and which power said court making said decree could not confer upon said trustees as aforesaid. Also, in that said decree went on in violation of law, to provide that the plaintiff in said foreclosure might sell any portion of said road or property as aforesaid, and might form a new corporation, etc.; and it further authorized and empowered the trustees to go on and run the said road, and to purchase property, etc., to run the same, all of which will more fully appear in the decree hereinafter referred to and hereto annexed. And that in many other respects said decree does not conform to the stipulations in said mortgage contained, or to the rules and practice of the court.

That, as appears from said two mortgages given to secure said second issue of bonds as aforesaid, there was a large amount of personal property attempted to be mortgaged therein; that neither of said two mortgages were ever filed as mortgages of chattels, or at all in the town clerk's office of any town in the State of New York, through which said railroad ran, to wit, in any town in the counties of St. Lawrence, Franklin, and Clinton; and said mortgages, or either of them, were never filed as mortgages of chattels in the county clerk's office in either of said three counties.

That thereafter, and on or about the 23d day of October, 1856,
26 the said William C. Brown, who was appointed referee in said decree as aforesaid, pretended to sell at public auction, in pursuance of said decree, the property described in said decree, as will more fully appear by the copy of the said report of sale, as filed with the record of judgment in said action in the county of St. Lawrence, a copy of which is hereto annexed, and is marked "Exhibit I," reference being hereby made thereto for the particulars thereof, and to the facts as to the service of an injunction prohibiting the sale of the Crawford bond, and the claim against Dexter and Putnam therefor, to the said William A. Wheeler, John S. Eldredge, and Anthony C. Brown, as trustees for the holder of the said second issue bonds of the Northern Railroad Company for the sum of three millions of dollars.

That said pretended sale was made of real and personal property altogether. That all the real estate belonging to said company, including its road, and its several depots, hotels, and woodlands, were all included in said sale, as well as the rolling stock of said road, the personal property at the several depots and stations upon said road, and a large number of boats, steamers, and other vessels on Lake Ontario, and other large quantities of personal property.

That said pretended sale was made at Malone, in the county of Franklin, and that a great part of the said personal property was not present at the place of said sale, but a large quantity thereof was from fifty to one hundred miles from said place of sale.

Wherefore, and by reason of the foregoing facts, these plaintiffs aver that the said decree of said court, decreeing said foreclosure and said sale in pursuance of said degree, were obtained by fraud and are void, and did not transfer any property whatever in the said trustees, purchasers as aforesaid.

That thereafter, said William C. Brown, as referee as aforesaid, in pursuance of said sale or pretended sale on said foreclosure, exe-
27 cuted a deed of the property held by said trustees, in pursuance of said sale, a copy of which report of sale is hereto annexed, and marked "K," and forms a part of this answer.

That, upon the 19th day of December, 1865, upon an application of the said trustees of said second mortgage bondholders, and after the pretended transfer of said road and property from said trustees to said Ogdensburgh and Lake Champlain Railroad Company, judgment, in said action brought as aforesaid to foreclose said mortgage for the deficiency upon said sale, was rendered, which it is claimed amounted, with interest, to the sum of $\$1,077,830\frac{42}{100}$, the roll of which was filed on the 20th day of December, 1865, which judgment said trustees now claim is due them from said Northern Railroad Company; that neither the Northern Railroad Company, this defendant, nor any stockholder of said company, had any notice of said application for judgment for the said deficiency, and these defendants insist that said judgment is irregular and void by reason of the facts hereinbefore alleged, and hereafter to be alleged.

And the defendants further say that the railroad bridge, piers, tracks, and boats, belonging to said Northern Railroad Company, and situated at Rouse's Point in the State of New York, and the franchise for maintaining said bridge were not included in either mortgage, and never passed (even if said mortgages shall be adjudged valid,) to the said trustees, by the surrender and foreclosure, but that the title to said bridge, piers, tracks, boats, and franchise, is still in this defendant the Northern Railroad Company; that the said trustees and the said Ogdensburgh and Lake Champlain Railroad Company, are bound to account and pay over to this defendant, the Northern Railroad Company, all sums of money arising from the use and occupation of said bridge, piers, tracks, boats, and franchise.

And these defendants further aver that the following parcels of land, with the buildings thereon, rails, tracks, wharves, piers, and franchises, situated in the town of Champlain and county of Clinton, and State
28 of New York, were never covered by any mortgage, or mortgages given by the officers or agents of said Northern Railroad Company to the trustees of said first or second mortgage bondholders or either of them, but that the said real estate hereinafter described, with the franchises, still belongs to and vests in the Northern Railroad Company. Said land is thus described, to wit: All that certain lot or farm of land situated in the town of Champlain aforesaid, being all that part of said lot 58, lately conveyed by said George Perry to the Northern Railroad Co., and bounded north by land now or late of George and Joseph Weeks; west by the Dewey farm, and south by the lot No. 47, occupied now or late by Loyal Oliver, containing 65 acres of land, more or less; also, all that certain other lot of land situated as aforesaid, being a village lot, bounded north by a lot of land conveyed by said George Perry to the Northern Railroad Company, east by Lake Champlain, and southerly and westerly by land now or late occupied by Loyal Oliver, containing one acre of land more or less.

And these defendants further say, that from the time the said trustees took possession of said road, in pursuance of said deed of surrender as aforesaid, to the time said trustees transferred said property to the Ogdensburgh and Lake Champlain Railroad Company, about August 1, 1865, the said William A. Wheeler and said John S. Eldredge, all of the time, and said other trustees from time to time during the

several times within that time, while they were acting as trustees as aforesaid, had possession of said railroad, said corporate property, rolling stock, and all other of said property so mortgaged to said trustees as aforesaid, in or by either of said mortgages so given as aforesaid, to secure said second issue of bonds of said company (if said mortgages or any part thereof, or of the bonds for which said mortgages were given as security as aforesaid, shall be determined by this court to be valid and effectual for any purpose whatever) as mortgagees in
29 possession, and are bound as such mortgagees in possession of said mortgaged property as aforesaid, to account to these defendants for the use and occupation thereof, and for all moneys received by them, for or on account of said road or other property so received by them from said pretended directors of said Northern Railroad Company by said deed of surrender, or of said pretended foreclosure of said mortgages as aforesaid.

And these defendants further aver that during said time the earnings of said road and said property were very large, amounting in fact to about eight hundred thousand dollars a year for each and every year of said term for the first five of said years, and over one million of dollars a year for the balance of said time; that after paying the necessary expences of running said road, and the other necessary and proper expenses that a mortgagee in possession should be paid, there was a large amount, over and above all such expenses, of profit in running said road, amounting, as defendants believe, to over three hundred thousand dollars a year for the whole of said time; but how much more, these defendants cannot state, but leave to be determined in this action; which sum, together with the other and proper sums hereinafter stated as properly chargeable to a mortgagee in possession as aforesaid, are to be allowed to these defendants upon any amount that may be found due, if anything should be found due, upon the two severals mortgages given as aforesaid to secure the payment of said second issue of bonds as aforesaid, should this court adjudge and determine that said mortgages or said bonds, or any part thereof, are legal and binding obligations upon the said Northern Railroad Company.

That during all of the time aforesaid, said trustees have improperly and illegally diverted from its proper channel large amounts of moneys, and have spent large amounts of money in building unnecessary buildings, machinery, and fixtures at Malone, Franklin County, N. Y., and at Ogdensburgh, N. Y., and other places upon the line of the route
30 of said road, and in building unnecessary rolling stock and fixtures upon said road, and in purchasing lands and property not necessary for the proper use and working of said railroad, and in the employment and payment of men as employees upon said road when they were not needed or useful thereon, and in divers and sundry other ways, misapplied, misappropriated, and wasted the money so received by them as aforesaid from said road and other property so taken into their possession as aforesaid; doing this for their own benefit and advantage in fraud of the rights of the company, this defendant. And these defendants insist that all the moneys so received by said trustees as aforesaid from said road, after deducting only the expenditures absolutely and necessarily made by said trustees for the benefit of the said Northern Railroad Company, should be applied by this court to the extinguishment of any sum of money that said court shall find due upon said second issue of bonds of said Northern Railroad Company, to secure which, said second mortgages were given, should it be determined that the said mortgages given by said pretended directors as aforesaid, to secure said second

issue of bonds, are legal and valid mortgages for any sum or sums whatever, and should it be further determined that any sum whatever was due from said company upon said second issue of bonds; and should the said mortgages, given as aforesaid to secure said second issue of bonds, be decided to be illegal and void, then these defendants claim that said trustees are bound to account to these defendants for all sums so received by them as aforesaid, after deducting actual and necessary expenditures, and, also, after deducting whatever sums said trustees may have actually paid to the trustees of the said first mortgages given to secure said first issue of bonds, should those mortgages, or either of them, be determined to be valid for the amount thereof, or any part thereof; that in such case only the avails and earnings of such property as was covered by said first mortgages should be applied upon
31 said first mortgages, and the remainder should be decreed to be paid over by the said trustees of said mortgages to the defendant, the Northern Railroad Company, and that such of said trustees as received that sum, or any part thereof, should be decreed to pay the same over to the company, person or persons, in the manner the same shall be found to be due by said court.

And these defendants aver that said Anthony C. Brown is dead; that said John S. Eldredge, said Anthony C. Brown, said Lee, and said William C. Brown were not, and no one of them was, legally or duly appointed as such trustee, and never had any legal right to act as such, and that each, every, and all of the acts of said several trustees in the premises, as hereinbefore set forth, or as hereinafter in this complaint to be mentioned, was and were done in violation of law, and without requisite or any authority so to do on the part of the said Lee, Eldredge, A. C. Brown, and W. C. Brown, as will more fully appear on examination of the several proceedings in court by which said several trustees claim to have been severally appointed, to which orders, applications, and proceedings, these defendants beg leave to refer.

And defendants further say that, by an act of the legislature of this State, passed on the 31st day of March, 1857, it was, among other things, provided that the holders of said "second issue of bonds" might form, and they were authorized to form, a corporation under the act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850, and the several acts amendatory of the same; and, on formation of said corporation, any bondholder could receive stock according to the amount of the bonds held by him.

That, at the time of the passage of the above and foregoing act, the said Northern Railroad Company was a company, even in law and in fact an existing railroad company, never having been dissolved, and were and are the owners in fact of said corporate property, and had then and now have the legal title thereto, and that the legislature
32 had no right or power to authorize the said second mortgage bondholders to form a corporation for and to take the property and effects of this defendant, the Northern Railroad Company, or of said other defendants, the stockholders of said company, without due process of law.

And defendants further aver that for the years 1855, 1856, 1857, 1858, 1861, 1862, 1863, and 1864, said trustees of said second issue of bonds made reports to the proper department at Albany, in the name of and as the Northern Railroad Company, reference being hereby made to the said reports in the legislative documents of this State for the particulars thereof.

And these defendants further aver that afterwards, and on the first day of December, 1857, and during the same year, said bondholders, or a portion of them sufficient for that purpose, did form such a corporation, in pursuance of the said act of the legislature, and by a compliance with said acts in that respect, under the name and style of the "Ogdensburgh Railroad Company," and did duly elect the directors of said company in pursuance of the said act and of the general law, to wit, William A. Wheeler, A. C. Brown, and John S. Eldredge, the then three trustees of said second mortgage bondholders, Sidney Lawrence, J. W. Clark, George A. Kettell, Thomas H. Perkins, James W. Sever, Isaac Spaulding, Onslow Stearns, A. G. Hammond, George W. Nesmith, and Timothy Hoyle, and did each and every thing necessary under said act to be done to form a corporation.

And these defendants further aver that afterwards, to wit, in 1858, the legislature of the State of New York, by an act thereof, duly passed on or about the 15th day of April, 1858, declared said Ogdensburgh Railroad Company a duly incorporated company in pursuance of said act of 1857. And these defendants aver that said corporation, the Ogdensburgh Railroad Company, so formed as aforesaid, has never been dissolved, and that the same still exists, and that the said Ogdens-
33 burgh Railroad Company is entitled to all the property and privileges given to it by said act or belonging to it as a corporation, and to all of the property in the hands of the said trustees, if any corporation could be authorized by law to receive said property.

And these defendants further aver that, if said company was duly and legally formed and organized, as aforesaid, said Wheeler, Eldrege, and A. C. Brown did not actually transfer the said corporate property of said Northern Railroad Company, to said new corporation so pretended to be entitled thereto under the said statutes. That the said trustees continued in the actual and continued possession of said property after the organization of said company, although said trustees, in the years 1859 and 1860, made the annual reports required by law to be made, in the name of said Ogdensburgh Railroad Company, reference being hereby made to said reports for the particulars thereof, said reports being printed documents on file in the office of the State engineer of the State of New York.

And these defendants aver that when the said Ogdensburgh Railroad Company organized, as above stated, and became a corporation, the power to organize a corporation under the said special statute of 1857, above and hereinbefore referred to, was exhausted and expended, and no other corporation or company could be formed or based upon said act. Yet these defendants aver that the owners of the pretended second issue of bonds of the said Northern Railroad Company, or some of them, pretending to act in pursuance of the power given by said act of the legislature of the State of New York, under which said Ogdensburgh Railroad Company was formed as aforesaid, and also under an act of the legislature that said bondholders had procured to be passed on the 8th day of April, 1864, amendatory thereof, proceeded to take proceedings to form another and a new and distinct corporation, in the fall and winter of 1864 and the summer of 1865, which attempts resulted
in the pretended formation of the said Ogdensburgh and Lake
34 Champlain Railroad Company, on or about August 1, 1865, from the holders of the pretended second issue of bonds of said Northern Railroad Company as aforesaid, and which Ogdensburgh and Lake Champlain Railroad Company claims to be a duly incorporated company, duly organized under the said statutes of the State of New York

as aforesaid. But defendants submit to this honorable court that even if said last-mentioned company was duly organized and became a corporation, yet that said corporation was not entitled to the property owned by the said Northern Railroad Company; that its organization did not and could not in any way supersede the said Ogdensburgh Railroad Company, or affect or take away its rights; and defendants ask leave to refer to, produce, and prove said acts of the legislature, and the said two organizations or attempted organizations under the same, and the acts, doings, proceedings and applications to the several courts, and the orders and proceedings had and made thereon, to the end that this honorable court shall adjudge as to the existence, rights, powers, privileges and conditions of the same, and their or either of their rights in the premises; and that said Ogdensburgh and Lake Champlain Railroad Company are now, and have been, since August 1, 1865, in the actual possession, use, and occupation of all of the corporate property and franchises of the said Northern Railroad Company, having, upon the day last aforesaid, received from the said trustees, Wheeler, William C. Brown, and Eldredge, upon the terms and conditions, and in the unlawful, corrupt, and improper manner hereinafter particularly mentioned, a transfer of the said corporate property and franchises.

And these defendants further aver that the said Eldredge and Wheeler openly, and said William C. Brown covertly, opposed the said transfer from them, as trustees as aforesaid, to the said Ogdensburgh and Lake Champlain Railroad Company, until the said Ogdensburgh and Lake Champlain Railroad Company agreed, on their part, if the said trustees would surrender up to them the corporate property and fran-
35 chises of the said Northern Railroad Company and the possession of said road, to pay said trustees large sums of money as hereinafter stated, and to pay large sums of money to divers and sundry other persons who pretended to be the counsel and friends of said trustees, and who pretended to have claims against the said trustees and the said Northern Railroad Company, when in truth and in fact said claims were only trumped up for the purpose of making an excuse for the payment of said large sums of money, to the full knowledge of all concerned, and to do divers and *other* sundry other things, as hereinafter mentioned, all of which said trustees, and said Ogdensburgh and Lake Champlain Railroad Company, and the directors thereof, knew to be corrupt, illegal, and improper.

That at the time of said transfer by said trustees to said Ogdensburgh and Lake Champlain Railroad Company, and during all the time the said holders of said pretended second issue of bonds of said Northern Railroad Company were attempting to compel the said trustees to make such transfer as aforesaid, said trustees, and each and all of them, well knew that they could prevent the transfer of said road and corporate property to said pretended corporation, and well knew, and were advised, that they, as trustees, were simply mortgagees in possession of the corporate property of said Northern Railroad Company, and were not the owners thereof, and had not title thereto, and that they had no legal right to transfer the same to the said pretended corporation, and well knew, and were advised, that said Ogdensburgh and Lake Champlain Railroad Company could not be, and was not, a legally organized company under said acts or under the laws of this State, and well knew of the existence of the said Ogdensburgh Railroad Company as aforesaid, said Wheeler and said Eldredge having been directors in said Ogdensburgh Railroad Company, and said Willian C. Brown having been counsel therefor and knowing all about the same, and well knew that it

was simply an attempt on the part of a few of the holders of said
36 second issue of bonds to get unlimited control of the said corporate property of the said old company, to the detriment of the stockholders of said company, and well knew that the said Northern Railroad Company was still in existence, and not dissolved. Nevertheless, the said trustees, William A. Wheeler and John S. Eldredge, with the knowledge and consent of said Brown, acting on the one side, and the said Ogdensburgh and Lake Champlain Railroad Company acting upon the other, in violation of law, and in fraud and injustice to the Northern Railroad Company, and the stockholders and creditors thereof, as well as in fraud of the rights of any honest and bona fide holder of said second issue of bonds, if there are any, bargained and agreed—the said Eldredge and Wheeler on the one part, and said Ogdensburgh and Lake Champlain Railroad Company and said William C. Brown on the other part—that the said trustees would withdraw all objections, and stipulate that the court should grant an order, without objection, that such trustees transfer the corporate property of said Northern Railroad Company and its franchises, as well that received by said trustees by said unlawful deed of surrender hereinbefore alleged as the property purchased and acquired by said trustees from the earnings of said road and property. And that, thereupon, said trustee would, in pursuance of said order, and in violation of law as aforesaid, to their knowledge as aforesaid, transfer to said pretended corporation, the said defendant, the Ogdensburgh and Lake Champlain Railroad Company, all of said corporate property as aforesaid, and deliver up to said Ogdensburgh and Lake Champlain Railroad Company said property, road, fixtures, rolling stock, and franchises; and said Ogdensburgh and Lake Champlain Railroad Company, on their part, in consideration of said unlawful acts on the part of the said trustees, as aforesaid, agreed, upon the transfer and delivery, as aforesaid, to pay the said Wheeler and Eldredge large sums of money for themselves and their pretended attorneys and counsel, as aforesaid—to wit, two hundred thousand
37 dollars and over—which said sum or any part thereof, was not due or owing to said trustees or said counsel or attorneys, but was agreed to be paid as a bonus as aforesaid; and said Ogdensburgh and Lake Champlain Railroad Company also agreed to make said William C. Brown, in case he would join in said transfer and delivery, the treasurer of said new company and the attorney thereof, at large salary for each of said offices.

That, thereupon, in pursuance of said corrupt and illegal agreement, the said trustees did consent to the entry by said court of said order, and said order was entered at a general term of the supreme court held in Saratoga County, at Saratoga Springs, reference being hereby made to said order for the particulars thereof; that said order was made by collusion and fraud between the parties pretending to represent the Northern Railroad Company, and the plaintiff's attorneys in said action or proceeding, and the attorneys who opposed in said proceeding for the first and second mortgage bond interest; and was made by a corrupt and unlawful agreement as aforesaid, which order, judgment, or determination, was and is void for the reasons aforesaid; that in pursuance of said order, said pretented trustees, on or about the 1st day of August, 1865, did pretend to transfer to said Ogdensburgh and Lake Champlain Railroad Company said road and corporate property, and did immediately thereafter deliver up possession of said road and said corporate property, and put said company in full possession thereof; and the said Ogdensburgh and Lake Champlain Railroad Company, on their part,

and in pursuance of said corrupt and illegal agreement, did pay to the said trustees, Wheeler and Eldredge, said large sums of money, to wit, about two hundred thousand dollars, as aforesaid, and did make the said William C. Brown the treasuer *or* said company, as by said agreement they agreed to do, as aforesaid.

That at least $20,000 of said money, so paid, was paid to and received by said William A. Wheeler, individually, and without any other
38 consideration, except that he should join in said unlawful transfer and delivery of said property to said company; and that at least $20,000 of said sum was paid to said John S. Eldredge upon the same terms and upon like consideration; but how much more of said sums so paid by said company were received by said Wheeler or Eldredge, or either of them, these defendants cannot now ascertain and cannot state, but ask to show upon the trial of this action.

That thereafter, and in pursuance and fulfil'ment of a portion of the foregoing corrupt and unlawful agreement, as plaintiffs are informed and believe to be true, said company paid said William C. Brown to resign the position of treasurer, as it was pretended, but really, as these defendants believe and charge the fact to be, to compensate said Brown for joining with said Wheeler and Eldredge in said illegal transfer and delivery of possession, as aforesaid, a large sum of money, to wit, at least $20,000, and how much more these defendants do not know, but beg leave to show upon the trial of this action.

And these defendants further allege that, if it shall be determined on the trial of this action that the said Ogdensburgh and Lake Champlain Railroad Company is a duly incorporated company, and has any existence at all, and should it also be determined that the transfer and delivery to said company by said trustees was not absolutely void by reason of the fraud hereinbefore alleged, but that said trustees could and did transfer to said company all the right, title, and interest that they, as trustees, had in and to said corporate property, then and in such case these defendants insist that the said trustees could not and did not transfer to said company any greater or other rights, interests, or claims to said property than said trustees, at the time aforesaid, had and possessed as trustees as aforesaid, and that the said The Ogdensburgh and Lake Champlain Railroad Company aforesaid are not in the position of bona
39 fide purchasers of said property for value, but take said property subject to all the equities existing between said trustees and said Northern Railroad Company and the stockholders and creditors thereof, and that, therefore, from the time the said Ogdensburgh and Lake Champlain Railroad Company acquired possession thereof, they stood in the place of their representatives, the said trustees, of said second issue of bonds of said Northern Railroad Company, and had no other or greater rights, and were and are in possession of said road and corporate property as mortgagees in possession, and are subject to and took the interest that the courts may, upon the determination hereof, decide that said trustees held, if any, on the said first day of August, 1865, and no other; and that from that day to the commencement or to the determination of this action, if it shall be determined that said trustees had any interest in said property on that day that could be transferred as aforesaid, the said Ogdensburgh and Lake Champlain Railroad Company should, and these defendants ask that they may be compelled to, account for the rents, issues, and profits of said road and property, as well that transferred by the pretended surrender of the Northern Railroad Company to said trustees as that acquired by said trustees after such surrender, and before said transfer to said Ogdens-

bergh and Lake Champlain Railroad Company as aforesaid; and also to account for the rents, issues, and profits of said road and property since they took the same from said trustees, as aforesaid, and account for all property acquired by them since said transfer, and that a full investigation into the dealings of said Ogdensburg and Lake Champlain Railroad Company, since they came into possession of said road, may be had.

And defendants further show, upon information and belief, that, on or about the 31st day of May, 1859, proceedings were had at the city of New York, in the supreme court of this State, but upon what nature, or day, or to whom, or whether in form of law, these defendants do not know. But they allege that these plaintiffs, the Northern Rail-
40 road Company, had no notice thereof; that one Francis B. Crowninshield and one George A. Kettell were appointed trustees of the first mortgage bondholders of said Northern Railroad Company in the place and stead of said James Savage and John James Dixwell, in the two mortgages hereinbefore set forth as executed upon the corporate property of said Northern Railroad Company, to secure the said first issue of bonds of said company, as aforesaid.

That thereafter, and upon the 29th day of July, 1859, upon proceedings had before the supreme court of this State, at Ogdensburgh, aforesaid, but without the knowledge of, and without notice to this defendant, the Northern Railroad Company, one James G. Hopkins was appointed a trustee of said first mortgage bondholders in said two first mortgages, as aforesaid, in the place and stead of said George N. Seymour, who had departed this life. And that thereafter, and on or about the 7th day of July, 1860, such proceedings were had before the supreme court of this State, at St. Lawrence County, but without notice to the Northern Railroad Company, or to any of the other defendants hereby answering, or to the stockholders thereof, that William C. Brown, the defendant, was appointed a trustee of said first mortgage bondholders in the place and stead of said James G. Hopkins, who had been appointed such trustee in the place of said Seymour, said Hopkins having departed this life, reference being hereby made to the several orders of this court, and to the proceedings and papers upon which said orders were made and granted for the particulars thereof, and for that purpose these defendants beg leave to refer thereto.

That the said trustees of the said two mortgages, so as aforesaid executed upon the said property of said corporation to secure said first issue of bonds, commenced in the supreme court of this State, a foreclosing of the said two mortgages.

That what, if any, notice was given, and what, if any, were served upon the Northern Railroad Company, these defendants are ignorant; but these defendants allege the fact to be that the services, if at
41 all, were made upon one of the employees of the said pretended trustees of said second mortgage bonds as aforesaid, and who had been prior thereto an officer of said Northern Railroad Company, but who, at the time of said service upon him, as aforesaid, was not an officer of said company, and that said stockholders of the said Northern Railroad Company, or said company in fact, had no legal notice or proper notice of said foreclosure suit upon the said mortgages given to secure said first issue of bonds, as aforesaid. And these defendants allege and aver that in the said foreclosure of said mortgages, and in the said several applications and proceedings to appoint trustees in the place and stead of the said trustees who had resigned, or attempted to resign, or who had died, the said courts acquired and had no jurisdiction of the

said defendants, the said Northern Railroad Company, or any of its stockholders. And these defendants aver that no attorney or attorneys, if any did attempt to appear for the said Northern Railroad Company on any of said proceedings on said preliminary suits or upon the granting of any order therein, was legally authorized, or had any authority whatever to appear for or on behalf of said Northern Railroad Company, or for or on behalf of the stockholders thereof.

That, after the commencement, or pretended commencement, of said pretended foreclosure of said mortgage, given to secure said first issue of bonds, such proceedings were had that, on or about the 12th day of December, 1859, an order, or what purports to be an order or decree, was entered by and before Justice Mullen, at Watertown, in the county of Jefferson, and certified by said justice to the county of St. Lawrence, by which order, judgment, or decree, it was, among other things, adjudged and decreed that the two mortgages to Savage, Dixwell, and Lyman were confirmed and adjudged valid and existing mortgages for the amount thereof, and that said mortgages were and should be a lien upon all of the property, real and personal, of said Northern Railroad Company, whether owned by said company at the time of the exe-
42 cution of said mortgages, or acquired by said company after the execution of said mortgages, or whether acquired by said trustees after they had taken possession of said deed of surrender in 1854, and upon all tolls, incomes, issues, and profits to be had from the same; and that said first mortgage be and was a lien upon the said Crawford and Chamberlain bond, and the mortgage given to secure the same, and upon all moneys collected therefrom; and that the said mortgages be, and they were, by the terms of said decree, extended over the said property, rents, issues, and profits hereinbefore lastly above mentioned.

And it was, also, by said decree or judgment, determined and adjudged that the stipulation and agreement theretofore executed by and between the said trustees of said mortgage to secure said first issue of bonds and the trustees in said mortgages named to secure said second issue of bonds, by which, upon certain terms and conditions, said first mortgage bonds were extended, and day of payment thereon postponed for ten years from July 1, 1859, should be, and was, made by said decree, a binding stipulation and agreement, and that the day of payment upon said first mortgage bonds was, by said judgment and decree, extended for ten years from said first day of July, 1859, reference being hereby made *for* said judgment and decree for the particulars thereof, a copy of which is hereto annexed and forms a part of this answer, and is marked "Exhibit L;" and defendants aver that thereafter, and on or about the 10th day of June, 1862, at Canton, St. Lawrence County, there was a further or supplementary order or decree made in said foreclosure suits upon said mortgage given to secure said first issue of bonds, by which it was, among other things, adjudged and decreed that all the fuel and shop stock then belonging to said trust, and all which shall be purchased by the second mortgage trustees, shall be subject to the lien of said first mortgages before mentioned, and gave the trustees of said first mortgage bondholders power, in case of default in payment of
43 interest or principal, to sell and dispose of the same, as though it were included in said original mortgage, reference being hereby made to the said supplementary order or decree for the particulars thereof.

And these defendants aver that said arrangement and agreement so made as aforesaid, and said order, judgment, and decree based thereon, and supplementary order, judgment, and decree, so far as they extend

the provisions and legal effects of the said two several mortgages, are made, and each and every such promise is made, in violation of law and of the rights of the said defendant, the Northern Railroad Company, and have no binding force and effect upon said Northern Railroad Company, or upon the stockholders or creditors thereof; and defendants insist that the recital in said judgment, order, and decree, that said first mortgages were or are legal and binding mortgages, is of no force, validity, or effect as to the said Northern Railroad Company, or as to the stockholders or creditors thereof; and these defendants aver that the said order, judgment, and decree was the result of fraudulent, corrupt, and unlawful agreement between the said first and second mortgage trustees and their several counsel, and made in violation of the rights of the said holders of stock in said company, and of the rights of the creditors of said company, and in fraud of the said court, including said first mortgage bondholders, and also in violation of the rights of all the bona fide second mortgage bondholders, if it should be determined that there are any such second mortgage bondholders; and that said decree, so far as it effects said several parties' interest and company, should be vacated and set aside; and defendants further aver that, one John C. Pratt, one of the defendants, and who was elected one of the directors in said Ogdensburgh and Lake Champlain Railroad Company, and who was soon thereafter elected president of said company, and who still acts as president of said company, as these defendants are informed and believe true, ordered the books of the said Northern Railroad Company, that were and have been, until 1866, at
44 Malone, Franklin County, N. Y., the principal place of business of said Northern Railroad Company, and of said second mortgage trustees, and also the books kept by said second mortgage trustees during the time they managed said road, to be taken from Malone aforesaid, where they properly belong, and to be taken out of the State of New York to some place to these defendants unknown; but defendants are informed that said books have been taken to the city of Boston, in the State of Massachusetts; that said Pratt, as president of said Ogdensburgh and Lake Champlain Railroad Company, and said company have, as defendants believe, and allege the facts to be, taken the said books, papers, and documents out of the State, for the purpose of preventing these defendants from obtaining possession of said books, *et.*; and these defendants fear that, unless the said Pratt and the said Ogdensburgh and Lake Champlain Railroad Company are enjoined from so doing, that they will destroy said books, papers, documents, and vouchers, so that no trace of the doings of the said trustees may be found or shown, and also to prevent these defendants and others from showing how, and in what manner, and for what consideration, said first and second issue of bonds of said Northern Railroad Company were issued.

That this defendant, the Northern Railroad Company, by its authorized officers, prior to the commencement of this action, duly demanded of said Pratt, as president as aforesaid, and of said company, the said books, papers, documents, and vouchers of said Northern Railroad Company, and said Pratt and said Ogdensburgh and Lake Champlain Railroad Company have refused and continue to refuse to deliver the same or any of them to the defendants; and the said Ogdensburgh and Lake Champlain Railroad Company and said Pratt have refused and continue to refuse, after frequent requests and demands, to allow these defendants to inspect, examine, or take extracts from the books, documents, vouchers, kept by said second mortgage trustees during their
45 control and operation of said road; and these defendants fear

that said Pratt and said Ogdensburgh and Lake Champlain Railroad Company will cause said books, papers, documents, and vouchers, so kept by said trustees, to be destroyed, unless enjoined by this court.

And these defendants aver, as they are informed and believe, that from September, 1853, to September, 1854, the said pretended treasurer of said Northern Railroad Company passed to one Edward Crane and others second mortgage bonds of said Northern Railroad Company, to the amount of six hundred and thirty-five thousand five hundred dollars, in payment of certain debts alleged to have been due said Edward Crane and others, to the amount of five hundred and thirty-six thousand eight hundred and four dollars and eighteen cents, and these defendants are ignorant whether said debts were just and existing debts of said Northern Railroad Company, and ask the determination of the court upon all said debts.

And these defendants aver, as they are informed and believe, that one Joseph W. Clark, on or about the 21st day of January, 1856, recovered a judgment against the said Northern Railroad Company, for over $8,000, which judgment was docketed and filed in the office of the county of St. Lawrence, on that day; that these defendants knew nothing as to whether the debt upon which said judgment was recovered as aforesaid, was or is a just and existing debt against said Northern Railroad Company or not, but these defendants, upon their information and belief, aver that said judgment was recovered without proper service upon the said Northern Railroad Company or any of its officers, and that there was no just debt due to said Clark from said company; and these defendants ask the determination of this court upon all said questions in said action.

That after the recovery of said judgment, as aforesaid, such proceedings were had that, upon application to the supreme court, that court, by an order duly entered, appointed Timothy Hoyle, one of the
46 defendants herein, the receiver of all of the property and effects of the said Northern Railroad Company, and which said order was dated in January, 1857; that the said Hoyle complied with the provisions of said order, gave the necessary security, and assumed the duties of receiver, according to law; that said Hoyle, as receiver as aforesaid, has, as these defendants are informed and believe, and therefore allege the fact to be, collected from a certain judgment received by said Northern Railroad Company against a firm of Hurlbut & Ames, about $9,000, which amount he now has in his possession, claiming the same as receiver as aforesaid; that, as defendants are informed and believe true, said Hoyle has never had possession as such receiver of any other property and effects of the said Northern Railroad Company, and has not now possession of any other of the property and effects of said company.

And defendants allege that the said moneys so collected by said Hoyle is the property of said Northern Railroad Company, and that the said company is entitled thereto for the reason that the said judgment so recovered by said Clark was not a valid judgment against said company, and should be set aside and vacated as aforesaid.

And these defendants further aver that, on or about the 20th day of April, 1866, the said Ogdensburgh and Lake Champlain Railroad Company and said William C. Brown, William A. Wheeler, and John S. Eldredge aforesaid, well knowing of the election of a new board of directors by the stockholders of the said Northern Railroad Company, and of the determination of said new board of directors and said stockholders to prosecute the said Ogdensburgh and Lake Champlain Rail-

road Company, and said trustees of said second issue of bonds as aforesaid, for the purpose of investigating the fraudulent, improper, corrupt, and unlawful acts of said trustees and said directors and company of said Ogdensburgh and Lake Champlain Railroad Company, and
47 after the newly-elected board of directors of said Northern Railroad Company had published a pamphlet or address to the large number of stockholders of said Northern Railroad Company, exposing some of the many fruadulent, improper, and unlawful acts of said parties, and after said newly-elected directors of said Northern Railroad Company had demanded the books of said Northern Railroad Company from said Pratt and from said Ogdensburgh and Lake Champlain Railroad Company, and had notified said company, and said trustees of said second mortgages, that they would be called upon to account for all of the matter and things hereinbefore alleged, persisting in their determination and conspiracy to defraud the said stockholders and creditors, if any, of said Northern Railroad Company, and to prevent any investigation into the said affairs of said company and of said trustees aforesaid, procured one Calvin W. Gibbs, of Ogdensburgh, St. Lawrence County, who, as sole surviving executor of said James G. Hopkins, pretended to hold a few shares of the capital stock of said Northern Railroad Company, (but what amount, if any, said Gibbs really held of said capital stock these defendants are not informed,) to commence a suit in the supreme court of the State of New York, against this defendant the said Northern Railroad Company, for the purpose of declaring the said corporation dissolved; that said Gibbs, by Brown and Hasbrook, his attorneys, commenced said action by serving the summons in said action upon the said Samuel C. F. Thorndike, who was at the time—to wit, on the 20th day of April, 1866—in the employ of the Ogdensburgh and Lake Champlain Railroad Company, and who the said attorneys well knew had not been an officer of said Northern Railroad Company for more than thirteen years, and said service was made by L. Hasbrook, jr., one of the said plaintiff's attorneys in said last-mentioned action.

That, therefore, and on or about the 14th day of May, 1866, said Thorndike, well knowing that he was not an officer of said North-
48 ern Railroad Company, and well knowing the object for which said action was commenced, and well knowing that at the time of said service there was a board of directors of said Northern Railroad Company, with a president, secretary, and treasurer thereof; and with intent to aid said Ogdensburgh and Lake Champlain Railroad Company, and said trustees, in their attempts to defraud the said Northern Railroad Company, as aforesaid, and at the instance and request of said attorneys for the said plaintiffs in said suit, who were also the attorneys for the said Ogdensburgh and Lake Champlain Railroad Company, as hereinafter stated, pretended to employ a law firm at Ogdensburgh—to wit, that of Morris & Vary—to appear for the said Northern Railroad Company; that said Morris & Vary, as appears from the judgment-roll in said case, did appear for said Northern Railroad Company in said action so commenced by said Gibbs, but did not answer for said defendants, and that thereupon and after twenty days had elapsed from the service of said complaint and summons upon said Thorndike aforesaid, and at an adjourned special term of the supreme court of the State of New York, held at Canton, in the county of St. Lawrence, by Justice James, on the 15th day of May, 1866, an order was made and entered, dissolving the said Northern Railroad Company, and appointing the said William J. Averill, of Ogdensburgh, receiver

of the property and effects of the said company, to which order, judgment, and decree, reference is hereby made for the particulars thereof, the same being hereto annexed and marked "Exhibit M," and forming a part of this answer.

That the said William C. Brown, is the Brown of the firm of Brown & Hasbrook, plaintiff's attorneys in said last-mentioned action, and the said L. Hasbrook, jr., who, it is recited in said decree and judgment, appeared for the plaintiffs, is the Hasbrook of said firm; and the William C. Brown, who is also recited in said judgment and decree appeared for the defendant in said suit, is the said defendant, and said trustee of both said first and second mortgages hereinbefore referred to.

49 That said Brown & Hasbrook are now, and have been ever since the said Ogdensburgh and Lake Champlain Railroad Company obtained possession of said road, the counsel and attorneys of said Ogdensburgh and Lake Champlain Railroad; that said Morris & Vary were never employed or authorized to appear in said action by the said Northern Railroad Company, or by any officer thereof, and they or said Brown, one of said defendants' attorneys who appeared on said final judgment for the defendant, had no authority whatever to appear for the said Northern Railroad Company in said actions; and these defendants aver that the said William C. Brown, said L. Hasbrook, jr., and said Morris & Vary, were each and all in the employ of, and paid for their services in said action by, the said defendant, the said Ogdensburgh and Lake Champlain Railroad Company, its officers, and were, and each of them was, in the matter aforesaid, in law and in fact, the attorneys of the said Ogdensburgh and Lake Champlain Railroad Company, and acting for them in the premises; that said action was fraudulently and corruptly brought, at the instigation of said trustees and said Ogdensburgh and Lake Champlain Railroad Company, for the fraudulent purposes aforesaid, and the defendants allege that the court never acquired jurisdiction of said action; that the judgment under them is fraudulent and void as to these defendants, the Northern Railroad Company, or the stockholders thereof, and that the same should be set aside for fraud; that these defendants never knew that said action was pending until after the same was in judgment, and never heard thereof, until on or about the 1st day of July 1866.

And these defendants further aver that, on or about the 7th day of March, 1866, the stockholders of said Northern Railroad Company, in pursuance of a call for that purpose, met at Ogdensburgh, in the county of St. Lawrence, for the purpose of electing directors of said company, said company not having elected directors for several years prior

50 thereto, their property having been in the hands of the mortgagees, as aforesaid, and thereupon proceeded to the election of thirteen directors, in pursuance of the charter and by-laws of said company, and thirteen persons, who were duly qualified, were then and there duly elected directors of said Northern Railroad Company; that immediately thereafter the said directors so elected, as aforesaid, selected, in pursuance of this charter and by-laws, and of the statute in such case made and provided, one of their number—to wit, John L. Lovering, of Exeter, N. H., this defendant—as president of said company, and, also, elected a secretary and treasurer of said company; that said John L. Lovering is now, and has been ever since his appointment, as aforesaid, the president of said company.

And defendents further aver that the said second mortgage bondholders, or a portion of them, but what portion the defendants cannot

state, have pretended to convert their said second mortgage bonds into stock in said Ogdensburgh and Lake Champlain Railroad Company, in pursuance of the provisions of said act of 1857, and the act amendatory thereof, passed 1864. And defendants allege that said second mortgage bondholders, who are holders of the said converted stock as aforesaid, and who pretend to be an incorporated company, under the name of the Ogdensburgh and Lake Champlain Railroad Company, applied to the legislature of 1866 for, and obtained the passage of, an act of the legislature of this State authorizing said Ogdensburgh and Lake Champlain Railroad Company to issue $2,000,000 of preferred stock of said Ogdensburgh and Lake Champlain Railroad Company to be preferred before the said second mortgage bonds of said company so converted, or to be converted into stock of said company as aforesaid, said preferred stock to be guaranteed to pay four per cent. semi-annually; that *is* was and is pretended that $1,500,000 of said preferred stock so authorized to be issued as aforesaid, is to be used for liquidating and taking up the said $1,500,000 of first mortgage bonds, secured by said two first
51 mentioned mortgages, and which, by the terms of the stipulation extending the time for the payment thereof, will become due July 1st, 1869, and the balance of said $2,000,000 of preferred stock, so authorized to be issued as aforesaid, it was claimed was to be used by said company in purchasing rolling stock, etc., for said road, when in truth and in fact they were intended to be and, if used or converted at all, have been actually converted to raise money to repay the said sums, so improperly, unlawfully, and corruptly paid, as hereinbefore set forth by said pretended Ogdensburgh and Lake Champlain Railroad Company, to get possession of said road and property from said trustees, as aforesaid.

And these defendants, upon information and belief, aver that the said Ogdensburgh and Lake Champlain Railroad Company have, in violation of the provisions of the statute last above described, issued large amounts of such preferred stock, in excess of the amount authorized by said act, and in excess of the five hundred thousand dollars over and above the fifteen hundred thousand dollars authorized by said act to retire said first mortgage bonds.

That said excess has been issued in violation of law, and of the rights of these defendants, and of the rights of all other persons interested in said road.

And these defendants further aver that the persons pretending to be the stockholders of the Ogdensburgh and Lake Champlain Railroad Company are speculators, who either receive the second mortgage bonds from said pretended directors of the said Northern Railroad Company, without any consideration, and in violation of the rights of the stockholders of said Northern Railroad Company, or who fraudulently received said bonds for a very small percentage of the face or value; or they are persons who have purchased said second mortgage bonds for a trifling sum, for the purpose and with the intent of getting possession of said road and property in the manner and for the purpose hereinbefore mentioned, and for the purpose of depreciating the actual value of
52 said road, as hereinafter mentioned, by not keeping the same in proper or sufficient repair, so as to save a great increase of net earnings temporarily, and then dispose of their said bonds or stock, to the great injury of the road and these defendants, and of all the owners of the stock of said Northern Railroad Company.

And the defendants aver that they can, if the court shall adjudge to the said Northern Railroad Company the possession of said road and

property, manage, operate, and conduct the same in such a manner as to pay off all said first mortgage bonds that this court shall, upon fair and full investigation, ascertain and determine to be valid and legal bonds, and can also pay and discharge, within such time as said court may direct, all of said second mortgage bonds, if any, that said court shall determine a legal, valid, and existing indebtedness against said Northern Railroad Company, if the same, and each and all of them, have not been fully paid *paid* by the earnings of said road and corporate property during the term the said trustees of said second mortgage bonds have had possession of said road, as aforesaid; and, also, can pay all existing debts due from said Northern Railroad Company, not included in either of said issue of bonds, and can make said road a paying road to the said stockholders thereof, to wit, the stockholders of the said Northern Railroad Company.

That the stockholders of said Northern Railroad Company subscribed about two million dollars to the stock of said company, and paid in upon said stock over one million five hundred thousand dollars, which sum was duly expended upon and for the construction of said railroad of said company, and in the purchase of land, property, rolling stock, and machinery for the necessary use and management of said road, and that the said stockholders of the said company, whom these defendants in part represent, have never received anything upon their said stock by way of dividends or otherwise.

53 And these defendants further aver, upon their information and belief, that said railroad, running from Ogdensburgh aforesaid to Rouse's Point aforesaid, and built by this defendant, the Northern Railroad Company, if it were properly, discreetly, and economically managed, operated, and conducted, would, from its legitimate and fair earnings, yearly pay at least seven per cent. upon the cost of said road, and seven per cent., or more per annum, upon the capital stock of said company, and on all the bonds of said company, and pay its floating debt, if any now exist.

And these defendants deny each and every allegation and averment in the complaint in this action contained, not hereinbefore specifically admitted.

And these defendants, for a further and other defence to this action, aver that they are, and have been, directors of said defendant, the Northern Railroad Company; that the said company has never been legally dissolved, and has never forfeited its rights as a corporation under the laws of the State of New York.

That these defendants were at the times alleged in the said complaint, bona fide stockholders of the said Northern Railroad Company, having paid value for their said stock, and that these defendaats, being such stockholders, and being advised by their counsel that the property and franchises of said Northern Railroad Company still belonged to the original stockholders of said company, subject only to such equitable rights as the first and second mortgage bondholders might be deemed to possess, did participate in an election, and were duly elected directors of said Northern Railroad Company, and as such directors, did commence an action in the supreme court of the State of New York, against the Ogdensburgh and Lake Champlain Railroad Company, and against all others who were or could be interested in the questions involved, which action is now pending and undetermined.

54 That these defendants have never undertaken to obtain possession of the said railroad property or franchises, except upon a determination of the courts of this State that they were entitled thereto.

That such election of directors and such suit was had and brought in good faith, and for the simple purpose of determining by the courts of this State of the rights of the stockholders of said Northern Railroad Company.

That these defendants are pressing said action, so brought by them as aforesaid, to an early determination, to the end that all questions between them may be settled and determined.

That the several issues in the said action brought by this defendant, the Northern Railroad Company, cannot be determined in this action, unless the Ogdensburgh & Lake Champlain Railroad Company, said trustees in this answer named, and the other persons named as defendants in the action brought by this defendant, the said Northern Railroad Company, be made parties hereto, and these defendants insist that this action should be stayed until the determination of the said action brought by this defendant, the said Northern Railroad Company, wherein it will be determined which is the legally existing company, and entitled to the property and franchises of said road.

And these defendants demand that it be adjudged and decreed that the present board of directors and officers of said Northern Railroad Company are the duly elected and proper representatives of said company, and that they are, as the representatives of said company, entitled to the immediate possession, management, and control of said Northern Railroad, and of all the rolling stock, fixtures, and other corporate property, and also of all of the property of any kind or description acquired by said trustees while in possession of said road, or by the said Ogdensburgh and Lake Champlain Railroad Company since they acquired possession thereof, and that for all the reasons in this answer contained this action be dismissed, with costs.

55 And defendants ask such further and other order, judgment, decree, or relief in the premises as to the court may seem just and proper in the premises.

SMITH M. WEED,
Att'y for def'ts., the Northern R. R. Co., John L. Lovering, Frederick Clapp, A. W. Chamberlin, and C. C. Chamberlin,
Plattsburgh, N. Y.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss :

John L. Lovering being duly sworn, says that he is the president of the Northern Railroad Company, one of the defendants named in the foregoing answer; that he has heard the foregoing answer read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN L. LOVERING,
Pres't Northern Railroad Company.

Sworn to before me this 12th day of March, 1868,

SETH AMES,
Chief Justice of Superior Court.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss :

John L. Lovering, C. C. Chamberlin, and Frederick Clapp, three of the defendants named in the foregoing action and answer, being duly

sworn, each for himself, says: That he has heard the foregoing answer read, and knows the contents thereof, and that the same is
56 true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN L. LOVERING.
FREDERICK CLAPP.
C. C. CHAMBERLIN.

Sworn to before me this 12th day of March, 1868,
SETH AMES,
Chief Justice of Superior Court.

Commonwealth of Massachusetts, Suffolk superior court.

I hereby certify that Seth Ames, before whom the within affidavit was taken and subscribed, was, at the date of said taking and subscribing, chief justice of said superior court, duly commissioned and sworn, that he is duly authorized to take acknowledgments and affidavits, that due faith are and ought to be given to his official acts, and that his signature is genuine.

Witness my hand, and the seal of said court, at Boston, in said county, this twelfth day of March, A. D. 1868.

[L. S.] JOS. A. WILLARD, *Clerk.*

57 A.

Chapter 324.*

AN ACT to provide for the construction of a railroad from the navigable waters of the great western lakes to Lake Champlain. Passed May 14, 1845, by a two-third vote.

The people of the State of New York, represented in senate and assembly, do enact as follows:

§ 1. All persons who shall become stockholders pursuant to this act shall be, and they are hereby, constituted a body politic and corporate for the term of fifty years, by the name of "The Northern Railroad Company," for the purpose of constructing and maintaining a railroad from Ogdensburgh, in the county of St. Lawrence, to some point on Lake Champlain, on such route as the majority of the directors of said company shall determine to be best adapted to the public accommodation; and may take, transport, carry, and convey property and persons upon the same by the power and force of steam, of animals, or any mechanical power, or of any combination of them.

§ 2. If the said corporation shall not, within three years from the passage of this act, commence the construction of the said road, and expend, at least, the sum of twenty-five thousand dollars thereon, and shall not within nine years from the passage of this act finish the said road and put the same in operation, then the privileges granted by this act shall from thenceforth forever cease, and this act shall be null and void; except such portions of said road as shall be constructed
58 shall be vested in said company, for and during the period allowed in the original act of incorporation.

§ 3. The capital stock of the said corporation shall be two millions of

* Session Laws of New York for 1845, page 351.

dollars, which shall be divided into shares of fifty dollars each, which shares shall be deemed personal property, and be transferred in such manner as the said corporation shall in its by-laws direct; and David C. Judson and Joseph Barnes, of the county of St. Lawrence; and Samuel C. Wead, of the county of Franklin; and Amasa C. Moore, of the county of Clinton; and Oliver Keese, second, of the county of Essex; and Luther Bradish and William H. Harrison, of the city of New York, shall be commissioners to receive subscriptions and distribute the stock.

§ 4. The corporation hereby created shall possess and enjoy all the privileges and provisions which are granted to and made in favor of the corporation created by the act entitled, "An Act to provide for the construction of a railroad from Attica to Buffalo," passed May 3, 1836, and shall be subject to all the conditions and restrictions which, by the act aforesaid, are imposed upon the corporation therein referred to, except as herein provided; but the amount to be paid in at the time of subscribing shall be, on each share, two dollars and fifty cents.

§ 5. Any application to be made to a vice-chancellor under this act shall be made to the vice-chancellor of the circuit in which the land proposed to be taken shall be situated. All notices and meetings required in the act above referred to shall be published and held in one of the counties through which the railroad hereby authorized is to be made.

§ 6. The said corporation shall not charge a sum exceeding four cents per mile for the transportation of passengers and their ordinary baggage.

§ 7. The legislature may, at any time, alter or repeal this act.

59 *Chapter LX.**

AN ACT to extend the time for a compliance of the Northern Railroad Company with the second section of their act of incorporation. Passed March 13, 1854.

The people of the State of New York, represented in senate and assembly, do enact as follows:

§ 1. The time within which the Northern Railroad Company are required to perform the act specified in the second section of the act entiled, "An Act to provide for the construction of a railroad from navigable waters of the great western lakes to Lake Champlain," passed May fourteenth, eighteen hundred and forty-five, is hereby extended two years from the time of the passage of this act.

§ 2. This act shall take effect immediately.

B.

By-laws of the Northern Railroad Company, New York.

ANNUAL MEETING OF THE STOCKHOLDERS.

1. There shall be a stated meeting of the stockholders of the company on the first Monday of June in each year, as required by the act of incorporation, at such time and place, in either of the counties of St. Lawrence, Franklin, or Clinton, in the State of New York, as the directors

* Session laws of 1854, page 135.

of the said company shall appoint; thirty days' previous notice
60 of which, stating the object or the meeting, shall be given by the president and secretary of the company, or one of them, in a newspaper in one of said counties, and in the State paper, and also in a newspaper published in the city of Boston.

At such stated meeting, there shall be elected by ballot from the stockholders, thirteen directors of the said company, who shall respectively hold their offices until others are elected in their places, or until they cease to be stockholders. Every such election shall be held under the inspection of five stockholders, not being directors. A plurality of votes shall constitute a choice. In case of an equal number of votes being given for any two or more persons, the directors elected shall determine by ballot who shall be entitled to a seat at the board.

Every stockholder being a citizen of the United States, shall be entitled to one vote personally, or by proxy, on every share held by him thirty days previous to such election. The authority to vote by proxy, signed by the proprietor, or a notarial copy thereof, shall be delivered to the inspectors, and be filed with the treasurer or secretary.

SPECIAL MEETINGS OF STOCKHOLDERS.

II. In case it shall happen at any time that an election of directors shall not be duly held on the day designated by the act of incorporation, and specified in section I of these by-laws, it is the duty of the president and secretary to notify in the manner mentioned in section I, and cause an election of directors to be held within sixty days immediately thereafter. And in such cases no share or shares shall be voted upon, except by the persons who may have appeared on the transfer books to have had the right to vote thereon, on the day when such election ought to have been held.

61 Other special meetings of the stockholders may be called on thirty days' notice, published as before prescribed, whenever the directors shall deem necessary, and also whenever ten or more stockholders, representing at least $200,000 of the capital stock of the company, shall in writing require it of the president or secretary.

At special meetings of the stockholders, except when called for the purpose of an election, one-half of the capital stock of the company must be represented; but meetings, at which less than one-half the stock is represented, may be adjourned to such time and place as a majority present may determine.

OFFICERS OF THE COMPANY.

III. The directors shall choose a president and secretary of their board, who shall also be president and secretary of the company; also a treasurer of the company, and such other officers and agents as may be necessary, and who shall hold their offices for the term of one year, and until others are elected, except in case of death, resignation, or removal, in which case the vacancy may be filled by the board of directors.

The president and secretary of the company, when present, are to act as president and secretary of all meetings of the directors and of the stockholders; but the election of directors is to take place under the inspection of five stockholders, to be appointed for that purpose. In the absence of the president or secretary at any meeting, a president or secretary pro tem. may be appointed by the directors.

OF DIRECTORS.

IV. The board of directors shall hold stated meetings at such place or places as the board of directors shall determine; and adjourned meetings may be held at such time and place as the directors present may order, in case a quorum does not attend a stated or other meeting.

62 Special meetings may be called at any time and place by the president, or by any two directors, of which notice shall be given to each director by the secretary, or, in case of his absence or inability, by the president, or any two directors: Provided, if called by the directors in the State of New York, the meeting shall be held in the city of Boston.

Not less than seven directors shall constitute a quorum; and, a quorum being present, all the powers conferred upon the board of directors may be exercised by a majority of those present; provided that a majority of the whole number of directors required by the act of incorporation shall be necessary to locate or designate the line or route of the road.

The president and any two members of the board whom he may associate with himself, shall constitute an executive committee, to do all things required for the interests of the company in the interim between the meetings of the board, subject to the approval of the board at its first meetings, to which the committee shall report in writing.

A committee of two directors shall be appointed, whose duty it shall be to examine and audit the accounts of the president, treasurer, engineer, or engineers, and superintendant, at least once in three months, and report to the board at their next subsequent meeting.

No sale or conveyance of any property of the company shall be made, until expressly authorized by a resolution of the board of directors, entered upon its minutes.

Whenever a committee shall be appointed by the board, the secretary shall transmit a transcript of the business referred, to the chairman of the committee, who shall call the committee together, and their report shall be made in writing to the board.

No business shall be done at any meeting of the board, until the record of the preceding meeting has been read and approved; and at the close of each meeting, the minutes of the secretary shall be read.

63 OF THE PRESIDENT.

V. In addition to the duty of presiding at the meetings of the company and of the board, the president shall have the general supervision of the affairs, officers, and agents of the company; and may, at any time, call the executive committee, or any member of the board to his aid. He may draw orders on the treasurer for debts due from the company, subject to the approval of any two members of the board, and report his proceedings in writing to the board, at each meeting, and make such suggestions as, in his opinion, the interests of the company may demand.

OF THE SECRETARY.

VI. The secretary shall attend all meetings of the company and directors, and keep records of their proceedings in separate books, and

shall perform all the duties required by the charter and the by-laws. In his absence, a secretary pro tempore shall be appointed by the directors, who shall perform the duties of the secretary for the time being.

OF THE TREASURER.

VII. The treasurer shall give bonds to the company, with sureties, to the satisfaction of the directors, in the penal sum of not less than thirty thousand dollars, for the faithful discharge of his trust, to be lodged with the president of the company. He shall have an office in such place as the directors shall determine, accessible to all persons having business with the company, and to its officers and agents; shall keep all promissory notes and valuable papers of the company, except deeds and papers relating to titles, which may be kept with the secretary; shall collect all assessments and money due the company, and disburse the same, as the board of directors may order; surrender notes or promissory papers, on payment thereof, and discharge
64 mortgages or other securities concerning the same; and keep books containing the accounts of the company, and of all its funds that may pass through his hands.

He shall lay before the directors, at each stated meeting, a written statement of all notes, drafts, promises, and contracts, made, signed, indorsed, or surrendered by him since their last stated meeting; of all moneys received and expended; of all property bought and sold; and all other matters which he or the board of directors may deem important.

He shall make a complete settlement of the accounts and books annually and as much oftener as the board of directors shall require; and shall advise what dividends of profits may be made.

He shall assist in the preparation of the annual report of the directors to the legislature, or any other report that may be required by the legislature, or by law, of their proceedings, receipts, and expenditures; and shall make an annual report of the state of the treasury, including a schedule of debts due from the company to the stockholders, at their annual meeting.

He shall deposit to his credit, as treasurer of the company, in such bank or banks as the board of directors may select, all money received by him.

He shall issue certificates of stock to all persons entitled thereto, and keep books showing the number of shares held by the respective stockholders, and the dividen's due; and shall perform such other duties as the directors may reasonably require.

OF ENGINEERS.

VIII. The engineer or engineers shall lay out the road and construct the same, in all respects pursuant to the instructions of the board of directors; shall, when required, deliver to the board written estimates and reports, concerning the construction and use of the road, and all things relating thereto, with all his or their proceedings; and shall faithfully perform all other duties of the office assigned by the board of directors.

65 The chief engineer may make requisitions upon the treasurer, by drafts, for debts due for work done for the company; which drafts, when approved by the president, shall be paid by the treasurer.

SEAL.

IX. The seal of the company shall be kept by the treasurer, and shall be in the form following, namely, the corporate name of the company on the outer circle, with the letters "N. Y.," in the centre, and "1845," beneath. A duplicate of such seal may be made, and kept by the secretary of the company for such use as may be authorized.

ASSESSMENTS.

X. Whenever the board of directors shall have ordered an assessment on the shares of the company, the treasurer shall give notice of the same, and of the time and place payable, at least thirty days previous to the time of payment, in the State paper, or paper in which such notices are required by law to be published, and in one newspaper in each of the counties of *the* St. Lawrence, Franklin, and Clinton, and such other paper as the directors may order.

STOCK CERTIFICATES.

XI. Each stockholder shall be entitled to a certificate of his stock, when paid in full, signed by the president, and countersigned by the treasurer, and authenticated by the seal of the company.

TRANSFERS.

XII. All transfers of shares shall be made subject to legal assessments, and to the by-laws of the company, and shall be made in books to be kept for that purpose by the treasurer, in his office, or by
66 other person or persons *b*uly authorized, at such other place or places as the directors may designate. On the receipt of such transfer and of the original certificate, a new certificate or certificates, subject as above mentioned, shall be issued to the person or persons entitled to the same, if required, and receipts thereof shall be given to the treasurer or agent.

No transfer of stock shall be made until all arrearages and indebtedness to the company, on account of the same, shall be actually paid.

NOTES.

XIII. Every promissory note made in behalf of the company shall be signed by the treasurer, after having been approved by two directors.

DEEDS.

XIV. All deeds, conveyances, mortgages, and leases shall be executed and acknowledged by the president, countersigned by the treasurer or secretary, and authenticated by the seal of the company.

ALTERATIONS.

XV. These by-laws shall not be altered or amended, except at a meeting of directors, notice having been previously given to each director that alterations will be proposed to the by-laws at said meeting, and with the assent of a majority of the whole board of directors.

Amendment of by-laws.

FORFEITURE OF STOCK.

XVI. Whenever any stockholder shall refuse or neglect to pay any assessment or payment required, in the whole or in part, by the time that shall be specified in the notice required to be published by
67 sec. X of the by-laws, the board of directors may, at any time thereafter, declare such stock, together with all previous payments thereon forfeited to the company; provided that notice personally, or by letter deposited in the post office, addressed to the stockholder at his last place of residence known to the treasurer, be given by the treasurer at least thirty days before the day on which such forfeiture is to take effect; and the said board of directors may, at any time thereafter, proceed to sell the said stock, or cause the same to be sold at public or private sale, *given* to the stockholder thirty days' notice of such sale, in the manner herein specified for giving notice of forfeiture of such stock.

XVII. The treasurer is authorized, at his discretion, or the transfer agent, at his discretion, to refuse to allow any stockholder, in person or by letter of attorney, to transfer any shares upon the books of the company upon which the assessments are not all paid which have been laid by the directors, although such assessments may not be due at the time the transfer is proposed to be made, provided that, if the transferer is willing to sign a guarantee that such assessments shall be paid when due by the transferee or by himself, or his executors or administrators, the treasurer or transfer agent shall permit the transfer to be made.

XVIII. Vacancies in the board of directors may be filled by the board at any regular meeting thereof. The election shall be by ballot, and a majority of the votes of the members present entitled to vote shall be necessary to a choice.

68 C.

The Northern Railroad Company to James Savage, John James Dixwell, and George N. Seymour.

Trust mortgage deed.

Whereas, at a legal meeting of the directors of the Northern Railroad Company, a corporation created by an act of the legislature of the State of New York, held on the 10th day of January, in the year 1850, it was unanimously resolved that the president and secretary be authorized to mortgage all or any part of the property of this corporation, real and personal, together with its franchise, to secure the payment of all bonds which have been, or may be, issued by this company for the purpose of aiding in the construction and furnishing the road and its fixtures, to three such persons as shall be designated by the finance committee, as trustees, for the benefit of holders of such bonds; and whereas the said corporation have issued a large amount of bonds, payable in ten years from the 1st day of July in the year 1849, with seven per cent. interest, payable semi-annually; and the said company intend issuing other bonds of a like character, and payable in a like manner, all of which bonds have been, and will be, issued for the sole purpose of aiding the said company in the construction of their said road and

its fixtures, and the whole amount issued, and to be issued, is in no event to exceed the sum of one million and five hundred thousand dollars, nor is it in any event to exceed the amount of capital stock actually paid in;

And whereas the said finance committee have designated the Honorable James Savage, and John James Dixwell, esq., of the city of Boston, in the Commonwealth of Massachusetts, and George N. Seymour, esq., of Ogdensburgh, in the State of New York, as trustees, under the foregoing resolution, to receive the property of the said company in trust and mortgage as aforesaid:

Now, know all men by these presents, that the said Northern Railroad Company, in consideration of the foregoing, and of one dollar to the said company paid, by the said James Savage, John James Dix well, and George N. Seymour, the receipt of which is hereby acknowledged, have granted, transferred, and set over, and by these presents, do grant, transfer, and set over, to the said Savage, Dixwell, and Seymour, and the survivors and survivor of them, and their successors in the trust, the railroad of the said company, constructed and to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with, all and singular, the railways, rails, bridges, fences, privileges, rights, and real estate, buildings and fixtures of every kind and description, now owned by the said company, or which shall hereafter be owned by them, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for the railways, depots, or stations, with all the buildings standing thereon, or which shall be procured therefor, together with all the locomotives, engines and tenders, passenger cars, and freight cars, shops, tools, and machinery, now owned or hereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad of the said company, now constructed, and to be constructed, or to the using thereof.

To have and to hold the said premises to them, the said James Savage, John James Dixwell, and George N. Seymour, and the survivor and survivors of them, and their successors in the said office of trustees, in trust for the person or persons, bodies corporate or politic, who now are, or who shall hereafter become holders of any of the bonds so issued as aforesaid, by the said company, to the extent aforesaid, and subject to the possession, control, and management of the directors of the said company, so long as the said company shall well and truly pay the interest and principal of their said bonds, according to their terms, and shall keep their covenants in this deed. And the said company, for themselves and their successors, hereby covenant with the said trustees, their successors and assigns, that the bonds already issued as aforesaid, were issued for the purpose alone of aiding in the construction and furnishing of their said road and its fixtures, and that all the bonds hereafter issued by the said company, and for the security of which this mortgage is executed, shall be issued for the like purpose alone, and that all the proceeds of the said bonds shall be faithfully used in the manner herein contemplated; and, further, that the said company shall make such further conveyances or assurances, or instruments as may, by the said trustees, be deemed necessary, the more completely to carry into effect the intention of this mortgage, and in case of six months' default to pay either interest or principal of said bonds, when due and demanded, and upon request in writing of any one of the holders of said bonds, on which interest or principal is not duly paid as afore'aid, said trustees may and shall

take actual possession of the said railroad, and of all and singular the property and effects mortgaged, and, through the agency of the persons they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property, for the purposes of the security hereinbefore declared, first defraying, out of the same, the expenses of the road and its needful repairs. And the several trustees shall not, in any manner, be liable or responsible for any acts each other, to which they do not severally assent, and shall be accountable only for the exercise of reasonable diligence in the management of the said trust, and not for the acts of the agent or agents by them from time to time appointed under these presents. And in case of the death or incapacity of any one of the said trustees to act in the matter of the
71 said trust, the company and the surviving trustees shall select a new trustee to supply the vacancy thereby created, and shall thereupon make, execute, and deliver, all and singular, such further instruments and assurances as may be requisite to enable the trustees thus designated to execute, with the others, the purposes of said trust, and so on from time to time.

This conveyance is upon the express condition and limitation that, upon the payment or satisfaction of the principal and interest of each and every of said bonds, the estate hereby granted to the said trustees shall cease and be void, and the said premises hereby granted shall immediately be reinvested, in law and fact, in the said company, without any entry or other act. The said trustees shall receive no compensation for their services as trustees during the continuance of the said trust, but shall be allowed all their reasonable expenses in executing the same.

In testimony whereof, *in* said Northern Railroad Company have caused their corporate seal to be hereunto affixed, and the names of their president and secretary to be signed to this instrument, and the said parties of the second part have set their hands and seals (the day and year first above*) this eleventh day of February, eighteen hundred and fifty.

NORTHERN RAILROAD CO.,
By T. P. CHANDLER, *Pres.*
J. G. HOPKINS, *Sec.*
JA'S SAVAGE.
J. J. DIXWELL.
G. N. SEYMOUR.

Signed, sealed, and delivered in presence of—
BENJ. H. CURRIER,
GUSTAVUS T. HALL,
as to signatures of T. P. C., J. S., and J. J. D.

STATE OF MASSACHUSETTS,
Suffolk County, ss:

72 On the eleventh day of February, in the year one thousand eight hundred and fifty, before me, the subscriber, a commissioner in and for the said State, appointed by the governor of the State of New York, to take the acknowledgement and proof of deeds and other writings under seal, to be used or recorded in the said State of New York, and to administer oaths and affirmations, appeared Theoph-

* The words, "the day and year first above," being first erased.

ilus P. Chandler, Ja's Savage, and John J. Dixwell, and severally acknowledged that they had executed the within instrument.

And I certify that the persons who made the said acknowledgment, are known to me to be the individuals described in, and who executed the said instrument.

Given under my hand and seal.

BENJAMIN H. CURRIER,
New York Commissioner.

STATE OF NEW YORK,
St. Lawrence County, ss:

On the fifteenth day of February, 1850, before me, James C. Barter, a justice of the peace in and for said county, came James G. Hopkins, the secretary of the Northern Railroad Company, with whom I am personally acquainted, and he acknowledged that he had executed the within instrument, as and for the act and deed of the said Northern Railroad Company, by him as secretary thereof, and he being by me duly sworn, deposes and says, that he resides in the village of Ogdensburgh, in said county; that he is the secretary of the said Northern Railroad Company; that the seal affixed to the within instrument is the corporate seal of the said Nort'ern Railroad Company, and was affixed to the said instrument in pursuance of an order of the board of directors of the said company, for the uses therein expressed, and that he, in pursuance of such order, did subscribe his name thereto, as secretary of said company, which is to me satisfactory evidence of the due execution of said instrument.

J. C. BARTER,
Justice of the Peace.

73 STATE OF NEW YORK,
St. Lawrence County, ss:

On the 15th day of February, 1850, before me, James C. Barter, a justice of the peace of said county, came George N. Seymour, with whom I am personally well acquainted, and he acknowledged that he had executed the within instrument for the uses and purposes therein expressed.

J. C. BARTER,
Justice of the Peace.

STATE OF NEW YORK,
County of St. Lawrence, ss:

I, George S. Winslow, clerk of the county of St. Lawrence, do hereby certify that James C. Barter, whose name is subscribed to the certificates of the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgments, a justice of the peace in and for said county, duly authorized to take the same. And further, that I am well acquainted with the handwriting of the said justice, and verely believe that the signature to the said certificates of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county the 4th day of March, 1850.

[L. S.] GEO. S. WINSLOW, *Clerk.*

STATE OF NEW YORK,
County Clerk's Office, St. Lawrence County, ss:

The within instrument recorded in this office on the 15th day of Feb-

ruary, 1850, in book No. 17, of mortgages, pages 683, 684, 685, 686, and 687.

GEO. S. WINSLOW, *Clerk.*

Fees, $1 93, paid by J. S. R.

74 FRANKLIN COUNTY, *Clerk's Office, ss:*

Recorded the within mortgage, in this office, on the 5th day of March, 1850, at 9 o'clock a. m., in book No. 7, of mortgages, upon pages 193, 194, 195, 196.

U. D. MEEKER,
Deputy Clerk.

Charged N. R. R. Co.

CLINTON COUNTY, *Clerk's Office, ss:*

Recorded March 11th, 1850, 9 o'clock a. m., in liber W., of mortgages, pages 97, 98, 99.

CHA'S H. JONES, *Clerk.*

D.

The Northern Railroad Company of New York to James Savage and others, trustees for bondholders.

Mortgage.—Dated April 29, 1850.

Whereas the Northern Railroad Company, a corporation created by an act of the legislature of the State of New York, did, on the eleventh day of February, in the year 1850, mortgage its railroad and property to James Savage, John James Dixwell, and George N. Seymour, to secure the payment of the bonds issued and to be issued by the said company, for the purpose of aiding in the construction and furnishing of the said road, as by reference to the said mortgage, will more fully appear. And whereas at a legal meeting of the directors of the said railroad company, held on the tenth day of April, in the same year, it was resolved—

75 "That the mortgage of the property of this corporation, made on the eleventh day of February last to Messrs. Savage, Dixwell, and Seymour, be, and the same is hereby, approved by the board of directors, and the president and secretary are hereby authorized to make any other or further mortgage of all or any part of the property of the company, and of its franchise, to the said Savage, Dixwell, and Seymour, for the benefit of the bondholders of the company, that may be deemed necessary for the ample security of the payment of all the bonds issued and that may be issued by this company, to the extent of one million and five hundred thousand dollars."

And whereas it is deemed necessary that another and further mortgage of the said property and franchise of the said company be now made for the ample security of the payment of the said bonds of the said company issued and to be issued for the purpose aforesaid:

Now, know all men by these presents that the said Northern Railroad Company, in consideration of the foregoing, and of one dollar to the said company paid by the said James Savage, John James Dixwell, and George N. Seymour, the receipt of which is hereby acknowledged, have granted, transferred, and set over, and by these presents do

grant, transfer, and set over to the said Savage, Dixwell, and Seymour, and the survivor and survivors of them, and their successors in the trust, the railroad of the said company, constructed and to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with the franchise of the said company, and all and singular the railway, rails, bridges, fences, privileges, rights, and real estate, buildings, and fixtures of every kind now owned by the said company, or which shall hereafter be owned by them; and all the tolls, income, issues, and profits to be had from the same; and all the lands used and occupied for railway depots or stations, with all the buildings standing
76 thereon, or which shall be procured therefor, together with all the locomotives, engines, and tenders, passenger cars and freight cars, shops, tools, and machinery now owned, or hereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad of the said company, now constructed and to be constructed, or to the using thereof.

To have and to hold the said premises to them, the said James Savage, John James Dixwell, and George N. Seymour, and the survivors and survivor of them, and their successors in the said office of trustees, in trust for the person or persons, bodies corporate or politic, who now are or shall hereafter become holders of any of the bonds so issued as aforesaid, by the said company to the extent aforesaid, and subject to the possession, control, and management of the directors of the said company as long as the said company shall well and truly pay the interest and principal of the said bonds, according to their terms, and shall keep their covenants in this deed. And the said company, for themselves and their successors, hereby covenant with the said trustees, their successors and assigns, that the bonds already issued as aforesaid were issued for the purpose alone of aiding in the construction and furnishing their said road and its fixtures; and that all the bonds hereafter issued by the said company, and for the security of which this mortgage is executed, shall be issued for the like purpose alone, and that all the proceeds of the said bonds shall be faithfully used in the manner herein contemplated; and, further, that the said company shall make such further conveyances, assurances, or instruments as may by the said trustees be deemed necessary the more completely to carry into effect the intention of this mortgage. And in case of six months' default to pay either interest or principal of said bonds, when due and demanded, and upon request in writing of any one of the holders of said bonds on which interest or principal is not duly paid as aforesaid, the said trustees may and shall, for the term of six
77 months, advertise all the said property, real and personal, together with the franchise of the said company, to be sold at public auction at some place near the line of the said railroad; the said advertisement to be published at least three times in each week, in at least four of the daily papers printed in the city of New York, and in the same manner in at least four of the daily papers printed in the city of Boston, and at least once in each week in some paper printed in each of the counties through which the said railroad is located, if any such there be; and, at the time and place so appointed as aforesaid, the said trustees may sell the said property, real and personal, together with the franchise of the said company, at public auction as aforesaid, and make to the purchaser thereof a good and indefeasible title thereto, and out of the proceeds of such sale, after paying all costs and charges, the said trustees shall pay the interest and principal due on all the bonds

issued by the said company, and for the security of which this mortgage is made; and in case sufficient is not realized from such sale to pay the whole amount of the said bonds and interest thereon, then the said trustees shall distribute the same pro rata among the several bondholders; and if the proceeds of such sale be more than sufficient to pay all the said bonds, and costs, and charges, the overplus shall be paid to the said railroad company, or to the person legally entitled thereto.

And the said several trustees shall not in any manner be liable or responsible for any acts of each other to which they do not severally assent, and shall be accountable only for the exercise of reasonable diligence in the management of said trust, and not for the acts of the agent or agents by them from time to time appointed under these presents. And in case of the death, or incapacity of any one of the said trustees to act in the matter of the said trust, the company and the surviving trustees shall select a new trustee to supply the vacancy thereby created, and shall thereupon make, execute, and deliver, all and singular, such further instruments and assurances as may be
78 requisite to enable the trustee thus designated to execute with the others the purposes of said trust, and so on from time to time.

This conveyance is upon the express condition and limitation that, upon the payment or satisfaction of the principal and interest of each and every of said bonds, the estate hereby granted to the said trustees shall cease and be void, and the said premises hereby granted shall immediately be reinvested, in law and in fact, in the said company, without any entry or other act.

The said trustees shall receive no compensation for their services as trustees during the continuance of the said trust, but shall be allowed all their reasonable expenses in executing the same.

In testimony whereof the said Northern Railroad Company have caused their corporate seal to be hereunto affixed, and the names of their president and secretary to be signed to this instrument; and the said parties of the second part have set their hands and seals this twenty-ninth day of April in the year one thousand eight hundred and fifty.

NORTHERN RAILROAD COMPANY,
(Signed) By T. P. CHANDLER, *President.*
(Signed) " J. G. HOPKINS, *Secretary.*

Sealed and delivered in the presence of—
(Signed)
JOHN F. ROSSEEL,
as to the president and secretary.

(Signed) JAMES SAVAGE.
(Signed) J. J. DIXWELL.

BENJ. H. CURRIER,
as to James Savage and John J. Dixwell.

(Signed) G. N. SEYMOUR.

(Signed)
J. C. BARTER,
witness as to Geo. N. Seymour.

79 STATE OF NEW YORK,
St. Lawrence County, ss:

On the twenty-ninth day of April, 1850, before me, James C. Barter, a justice of the peace in and for said county, personally appeared Theophilus P. Chandler, president of the Northern Railroad Company, and James G. Hopkins, secretary of said company, with both of whom I am personally acquainted and know to be the individuals named in, and who, as such president and secretary, executed the foregoing conveyance or mortgage, and they duly acknowledged that they had executed the same, as such president and secretary, for and as the act and deed of the said company. And the said James G. Hopkins, being by me duly sworn, deposed and said that the said Theophilus P. Chandler, who made the acknowledgment aforesaid, is the president of the said Northern Railroad Company, and that the deponent is the secretary thereof; that the seal affixed to the said mortgage, purporting to be the seal of the said Northern Railroad Company, is the corporate seal of said company, and that the same was affixed to the said mortgage in pursuance of a resolution of the board of directors of said company. And, at the same time, appeared George N. Seymour, who is personally well known to me to be same individual described in, and who executed the foregoing conveyance; and he acknowledged that he had executed the same.

(Signed) J. C. BARTER,
Justice of the Peace.

STATE OF MASSACHUSETTS,
Suffolk County, ss:

On the seventh day of May, in the year one thousand eight hundred and fifty, before me, the subscriber, a commissioner in and for the said State, appointed by the governor of the State of New York, to
80 take the acknowledgment and proof of deeds and other writings under seal, to be used or recorded in the said State of New York, and to administer oaths and affirmations, appeared James Savage and John James Dixwell, and *acknowled* that they had severally executed the within instrument. And I certify that the persons who made the said acknowled'ment are known to me to be the individuals described in, and who executed the said instrument.

Given under my hand and seal.

(Signed) BENJAMIN H. CURRIER,
New York Commissioner in and for the State of Massachusetts.

ST. LAWRENCE COUNTY,
Clerk's Office, ss:

Recorded in this office on the 13th day of May, 1850, at 9 o'clock a. m., in book 18 A of mortgages, pp. 171, 172, 173, 174, and 175.

GEORGE S. WINSLOW, *Clerk.*

Received 13th May, 1850, at 9 o'clock a. m.

STATE OF NEW YORK,
Franklin Co., Clerk's Office, ss:

Received and recorded in this office on the 6th day of June, 1850, at 9 o'clock a. m., in book No. 7 of mortgages, on pp. 236, 237, 238, 239, 240.

U. D. MEEKER,
Deputy Clerk.

CLINTON COUNTY, *Clerk's Office, ss:*

Recorded June 21st, 1850, at 9 o'clock a. m., in liber U of mortgages, pp. 287, 288, 289, 290, 291.

CHA'S H. JONES, *Clerk.*

81 E.

Copy of the mortgage of Dec. 15, 1851, *to the second mortgage trustees.*

Whereas, the Northern Railroad Company, a corporation existing under the laws of the State of New York, owes a floating debt of a considerable amount which it has necessarily contracted in aid of the completion and finishing and operating of its railroad, which debt it is deemed the interest of the said corporation and of its creditors to fund, by issuing its bonds for the same, and it has been and is found necessary to borrow other large sums of money upon the bonds of the said corporation, already issued and hereafter to be issued, for the purpose of completing and finishing and operating its said railroad; and whereas, at a legal meeting of the directors of the said railroad company, held on the ninth day of October, in the year one thousand eight hundred and fifty-one, it was "resolved that the finance committee, with the assent of the president be and are authorized to secure creditors, endorsers, and guarantors of the corporation by liens upon the property of the company, in such manner as the committee may deem most expedient for the interest of the company, and that the proper officers of the corporation are hereby authorized to execute all proper instruments to evidence and carry out such liens and securities;" and whereas, the said finance committee of the said railroad company, with the assent of its president, deem it expedient for the interest of the said company to mortgage its corporate property and franchises to secure the payment of its bonds heretofore issued, and hereafter to be issued by the said company, for the purposes aforesaid, which are not secured by previous mortgage:

Know all men by these presents that the said Northern Railroad Company, in consideration of the foregoing and of one dollar to the said company paid by George Curtis, of the city of New York,
82 banker, William A. Wheeler, of Malone, county of Franklin, State of New York, esquire, and Jabez C. Howe, of the city of Boston, merchant, the receipt of which is hereby acknowledged, have granted, transferred, and set over, and by these presents do grant, transfer, and set over unto the said Curtis, Wheeler, and Howe, and the survivor and survivors of them and their successors in trust, the railroad of said company, constructed and to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with the franchise of the said company, and all and singular the railway, rails, bridges, fences, privileges, rights, and real estate, buildings, and fixtures of every kind and description now owned by the said company, or which shall be hereafter owned by them, and all the tolls, incomes, issues, and profits to be had from the same, and all the land used and occupied for railway depots or stations, with all the buildings standing or hereafter to be erected thereon, and all real estate now owned or hereafter to be acquired by the said company, together with all the locomotives, engines, and tenders, passenger cars, freight cars, and all other cars, and shops, tools, and machinery, now owned, or hereafter to be acquired

by the said company, and in any way belonging or appertaining to the said railroad of said company, now constructed, or to be constructed.

To have and to hold the said premises to them, the said Curtis, Wheeler, and Howe, and the survivor and survivors of them, and their successors in the office of trustees, in trust, for the person or persons, bodies corporate or politic, who now are or shall hereafter become holders of any of the said bonds so issued as aforesaid by the said company, whether payable in the currency of the United States or of England, and which bonds are known as the second issue of bonds of the said company, or convertible bonds payable in ten years; but this conveyance in trust of the said property and franchise is made subject to the possession, control, and management of the directors of
83 the said company so long as the said company shall well and truly pay the interest and principal of the said bonds, according to their terms, and shall keep their covenants in this deed, and also subject to a mortgage executed by the said company of its said property and franchise on or about the twenty-ninth day of April, in the year 1850, to James Savage, John James Dixwell, and George N. Seymour, in trust to secure the payment of bonds of the said company to the amount of one million five hundred thousand dollars, therein referred to, and known as the first issue of bonds of the said company. And the said company, for themselves and their successors, hereby covenant with the said trustees, their successors and assigns, that the bonds hereby intended to be secured were and shall be issued for the sole purpose of completing and finishing and operating their said road, and that all the proceeds of the said bonds have been or shall be faithfully used and applied in the manner herein contemplated; and further, that the said company shall make such further or other conveyances, assurances, or instruments as may by the said trustees be deemed necessary, the more completely to carry into effect the intention of this mortgage.

And in case of six months' default to pay either principal or interest of said bonds, when due and demanded, and upon request in writing of any one of the holders of said bonds on which principal or interest is not duly paid as aforesaid, the said trustees may and shall, for the term of six months, advertise all the said property, real and personal, together with the franchise of said company, to be sold at public auction at some place near the line of the said railroad, the said advertisement to be published at least three times in each week in at least four of the daily papers printed in the city of New York, and in the same manner in at least four of the daily papers printed in the city of Boston, and at least once in each week in some paper printed in each of the counties through which the said railroad is located, if any such there be, and at the
84 time and place so appointed as aforesaid, the said trustees shall sell the said property, real and personal, together with the franchise of the said company, at public auction as aforesaid, and make to the purchaser thereof a good and indefeasible title thereto, subject to the said prior mortgage, and out of the proceeds of such sale, after paying all costs and charges, the said trustees shall pay the interest and principal unpaid, whether the same shall at the time be due or not, on all the bonds issued by the said company, for the security of which this mortgage is made, or intended to be made; and in case sufficient shall not be realized from such sale to pay the whole amount of the said bonds and interest thereon, then the said trustees shall distribute the same, pro rata, among the several bondholders, and if the proceeds of such sale be more than sufficient to pay all the said bonds and costs and

charges, the overplus shall be paid to the said railroad company, or to the person or persons legally entitled thereto. And the said several trustees shall not in any manner be liable or responsible for any acts of each other to which they do not severally assent, and shall be accountable only for the exercise of reasonable diligence in the management of said trust, and not for the acts of the agent or agents by them from time to time appointed under these presents; and in case of the death or incapacity of any one of the said trustees to act in the matter of the said trust, the said company and the surviving trustees shall select a new trustee to supply the vacancy thereby created, and shall thereupon make, execute, and deliver, all and singular, such further instruments and assurances as may be requisite to enable the trustees thus designated to execute with the others the purposes of said trust, and so on from time to time.

This conveyance is upon the express condition and limitation that upon the payment or satisfaction of the principal and interest of each and every of such bonds, the estate hereby granted to the said trustees shall cease, and be void, and the said premises hereby granted shall be immediately reinvested, in law and in fact, in the said company, without any entry or other act.

85 In testimony whereof the said Northern Railroad Company have caused their corporate seal to be hereunto affixed, and the names of their president and secretary to be signed to this instrument; and the said trustees have hereto set their hands and seals this fifteenth day of December, in the year one thousand eight hundred and fifty-one.

NORTHERN RAILROAD COMPANY,
By T. P. CHANDLER, *President.* [L. S.]
J. G. HOPKINS,
Secretary of the Northern Railroad Company.
GEORGE CURTIS. [L. S.]
W. A. WHEELER. [L. S.]
JABEZ C. HOWE. [L. S.]

Sealed and delivered in the presence of—
JOSEPH STRONG,
As to George Curtis.

CITY AND COUNTY OF NEW YORK, *ss:*

On the second day of January, 1852, before me came George Curtis, known to me to be the same person described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

JOSEPH STRONG,
Commissioner of Deeds.

STATE OF NEW YORK,
City and County of New York:

[L. S.] I, George W. Riblet, clerk of the city and county of New York, do hereby certify that Joseph Strong, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a commissioner of deeds for said city and county, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such commissioner, and verily believe that the

86 signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said county the second day of January, 1852.

GEORGE W. RIBLET, *Clerk.*

STATE OF NEW YORK,
St. Lawrence County, ss:

On the sixteenth day of December, in the year 1851, before me, the undersigned, justice of the peace for the said county, personally appeared James G. Hopkins, with whom I am well acquainted and know to be the individual who, as secretary of the Northern Railroad Company, has executed the foregoing conveyance or instrument, and duly acknowledged before me that he had, as such secretary, executed the same; and the said James G. Hopkins being also by me duly sworn, deposed and said that the seal affixed to the said conveyance or instrument is the corporate seal of the Northern Railroad Company, and that the same has been affixed to said conveyance or instrument by the said deponent as such secretary, in pursuance of the resolution of the board of directors of said company recited therein, and by request of the president of said company.

ELIJAH WHITE,
Justice of the Peace.

STATE OF NEW YORK,
County of St. Lawrence, ss:

I do hereby certify that Elijah White, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a justice of the peace in and for the said county, duly authorized to take the same. And further, that I am well ac-
87 quainted with the handwriting of the said justice, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said county, the 17th day of January, 1852.

[L. S.] ISRAEL R. TUPPER,
Deputy Clerk St. Lawrence County.

STATE OF NEW YORK,
Franklin County, ss:

On the 17th day of December, in the year 1851, before me, the undersigned, county judge of said county, personally appeared Theophilus P. Chandler, with whom I am well acquainted, and know to be the individual who, as president of the Northern Railway Company, executed the foregoing conveyance or instrument, and duly acknowledged before me that he had, as such president, executed the same. And the said Theophilus P. Chandler, being also by me duly sworn, did depose and say that he resides in Brookline, in the State of Massachusetts; that he is the president of the said Northern Railroad Company, and that he executed the foregoing conveyance or instrument as such president, pursuant to a resolution of the board of directors of said company. And on the same day personally appeared before me William A. Wheeler, to me known to be the individual of that name, described in, and who

executed the foregoing conveyance or instrument, and acknowledged the same to be his act and deed.

J. R. FLANDERS,
County Judge.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I, Joseph H. Buckingham, a commissioner for the State of New York, residing at Boston, in the county of Suffolk, and commonwealt' of Massachusetts, do certify that on this the twenty-sixth day of December, in the year one thousand eight hundred and fifty-one, personally appeared before me, at said Boston, the within-named Jabez C. Howe, who *his* personally known to me to be the individual described in the foregoing deed, and he then and there signed and executed the same in my presence, and at the same time acknowledged to me that he had executed the same as his free act and deed.

88

In witness whereof I have hereunto set my hand and official seal, at Boston, in the county of Suffolk, and Commonwealth of Massachusetts, on the twenty-sixth day of December, A. D. 1851.

[L. S.] J. H. BUCKINGHAM, [L. S.]
Commissioner for the State of New York.

STATE OF NEW YORK,
Secretary's Office, ss:

I hereby certify that Joseph H. Buckingham, of Boston, county of Suffolk, and State of Massachusetts, was, at the time of taking the annexed acknowledgment a commissioner of the State of New York, to take the proof and acknowledgment of deeds and other instruments to be used or recorded in this State, and to administer oaths and affirmations, pursuant to charpter 270, Laws of 1850, and that such commissioner was, at the time aforesaid, duly authorized to take the same; and that I have compared the signature of the said commissioner to the certificate subjoined to the annexed instrument with the signature of such commissioner deposited in this office, and have also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in this office, and I verily believe the signature and the impression of the seal to the said certificate to be genuine.

Witness my *k*and and seal of office, at the city of Albany, this fourteenth day of January, one thousand eight hundred and fifty-two.

H. S. RANDALL,
Secretary of State.

89 Recorded in the clerk's office of St. Lawrence County, May 28th, 1852, in book No. 19 B, of mortgages, page 318, etc. In the clerk's office of Franklin County, January 19, 1852, in book 8, of mortgages, page 223, etc. In the clerk's office of Clinton County, November 12th, 1852, in liber W., of mortgages, page 403, etc.

F.

The Northern Railroad Company of New York to George Curtis and others.

Trustees for second bondholders.

This indenture, made this seventh day of April, in the year of our Lord one thousand eight hundred and fifty-four, between the Northern Railroad Company, a corporation created by, and existing under, the

laws of the State of New York, party of the first part, and George Curtis, of the city of New York, banker, William A. Wheeler, of Malone, in the county of Franklin, in said State, esquire, and Jabez C. Howe, of the city of Boston, merchant, parties of the second part, witnesseth: That, whereas the said parties of the first part did, by their certain deed of mortgage, bearing date the fifteenth day of December, in the year of our Lord eighteen hundred and fifty-one, for the purposes and for the consideration and upon the trusts therein mentioned and expressed, grant, transfer, and set over unto the said parties of the second part, and the survivors and survivor of them and their successors in the trust, the railroad of the said company and the other real and personal property, franchise, tolls, income, issues, and profits therein
mentioned, expressed, and referred to, then owned or there-
90 after to be acquired by the said company, and in any way belonging or appertaining to the said railroad of said company, then constructed or to constructed; and whereas the said company did, *and* by the said deed of mortgage, among other things, covenant that the said company should make such further or other conveyances, assurances, or instruments as might by the said parties of the second part be deemed necessary, the more completely to carry into effect the intention of the said deed of mortgage, which said conveyance was made by said company, subject to the possession of the mortgaged property by said company, in the manner therein mentioned, and subject to the mortgage to James Savage, John James Dixwell, and George N. Seymour, therein mentioned, which said first-mentioned deed of mortgage was recorded in the office of the clerk of the county of Franklin, in the State of New York, in liber No. 8, of mortgages, page 223, etc., on the nineteenth day of January, in the year of our Lord eighteen hundred and fifty-two; and in the office of the clerk of the county of Clinton, in said State, in liber W., of mortgages, page 403, etc., on the twelfth day of November, in the year of our Lord eighteen hundred and fifty-two; and in the office of the clerk of the county of St. Lawrence, in said State, in liber No. 19 B, of mortgages, page 318, etc., on the 28th day of May, in the year of our Lord eighteen hundred and fifty-two; a copy of which said first-mentioned mortgage is hereto annexed, marked A. And, whereas since the execution of the said first-mentioned mortgage, the said company has acquired other land and real and personal estate than such as were held and owned by said company at the time of such conveyance; and whereas said parties of the second part, in order that all the said personal and real estate in said first-mentioned mortgage, and in this present indenture mentioned and referred to, may be more fully and absolutely conveyed and confirmed
to, and vested in them as such trustees, and for the purpose in
91 said first-mentioned mortgage mentioned, have requested the parties hereto of the first part to execute and deliver to them this present instrument of conveyance; and whereas the said parties of the first part are willing and desirous, in pursuance and fulfil'ment of the covenant above mentioned, and for the purpose of more completely carrying into effect the intention of the said mortgage herein first above mentioned, to execute and deliver to said parties of the second part this present conveyance:

Now, know all men by these presents, that the said parties of the first part, in consideration of the premises, and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, confirmed, transferred, and set over, and by these presents

do grant, bargain, sell, convey, confirm, transfer, and set over unto the said parties of the second part and the survivors and survivor of them, and their successors in the trust, the railroad of the said company, constructed and to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with the franchise of said company, and, all and singular, the railway, rails, bridges, fences, privileges, rights, and real estate, buildings, and fixtures of every kind and description now owned by the said company, or which shall hereafter be owned by them, and all the tolls, incomes, issues, and profits to be had from the same, and all the land used and occupied for railway depots or stations, with all the buildings standing or hereafter to be erected thereon, and all real estate now owned or hereafter to be acquired by the said company, together with all the locomotives, engines, and tenders, passenger cars and freight cars, and all other cars and shops, tools, and mac'inery, and all other personal property whatsoever, of every name and natures, now owned or hereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad company, now constructed or to be constructed.

92 To have and to hold the said premises to them, the said parties of the second part, and the survivors and survivor of them, upon the same trusts and for the same purposes, and upon the same terms, and subject to the same qualifications, restrictions, and provisions, in all respects, as are mentioned and expressed in said deed of mortgage first above mentioned, and to which and the record thereof reference is here made.

And the said parties of the first part, for themselves and their successors, hereby covenant with the said parties of the second part, their srccessors, substitute or substitutes, survivors and survivor, and assigns, that the said company shall make such further or other conveyances, assurances, or instruments as may by the said trustees be deemed necessary the more completely to carry into effect the intention of the said deed or mortgage first above mentioned, and of this present instrument.

And the said parties of the first part, for themselves and their successors, hereby convenane to and with the said parties of the second part, their successors, substitute or substitutes, survivors and survivor, and assings, that they will furnish to the said parties of the second part, so soon as practicable, a schedule containing a true enumeration and mention of all the personal property belonging to the corporation, so far as the parties of the first part are now able to specify the same, and will hereafter, when required, from time to time, furnish further schedules of all after-acquired property.

And it is hereby further declared that the right of the said parties of the second part to any and all the personal property of the parties of the first part is not to be considered as disparaged or qualified by any omission of the mention or enumeration of the same in said schedule or schedules, but, in case of any such omission, the same shall, nevertheless, vest in them as absolutely as tho'gh it were set forth and specified in said schedule or schedules.

93 And in case of six months' default to pay either principal or interest of the bonds mentioned in the deed first above referred to, when due and demanded, and upon request in writing of any one of the holders of said bonds on which principal or interest is not duly paid as aforesaid, the said trustees may and shall, for the term of six months, advertise all the said property, real and personal, together with the franchise of said company, to be sold at public auction, at some

place near the line of said railroad, the said advertisement to be published at least three times in each week in at least four of the daily papers printed in the city of New York, and in the same manner in at least four of the daily papers printed in the city of Boston, and at least once in each week in some paper printed in each of the counties through which the said railroad is located, if any such there be; and, at the time and place so appointed as aforesaid, the said trustees shall sell the said property, real and personal, together with the franchise of the said company, at public auction, as aforesaid, and make to the purchaser thereof a good and indefeasible title thereto, subject to the said prior mortgage to the said Savage, Dixwell, and Seymour, and out of the proceeds of such sale, after paying all costs and charges, the said trustees shall pay the interest and principal unpaid, whether the same shall at the time be due or not, on all the bonds issued by the said company, for the security of which this mortgage is made or intended to be made; and in case sufficient shall not be realized from such sale to pay the whole amount of the said bonds and interest thereon, then the said trustees shall distribute the same pro rata among the several bondholders; and if the proceeds of such sale be more than sufficient to pay all the said bonds and costs and charges, the overplus shall be paid to the said railroad company, or to the person or persons legally entitled thereto; and the said several trustees shall not in any manner be liable or responsible for any acts of each other to which they do not severally assent, and shall be accountable only for the exercise of reason-
94 able diligence in the management of said trust, and not for the acts of the agent or agents by them from time to time appointed under these presents; and in case of the death or incapacity of any one of the said trustees to act in the matter of the said trust, the said company and the surviving trustees shall select a new trustee to supply the vacancy thereby created, and shall thereupon make, execute, and deliver, all and singular, such further instruments and assurances as may be requisite to enable the trustees thus designated to execute, with the others, the purposes of said trust, and so on from time to time.

This conveyance is upon the express condition and limitation that, upon the payment or satisfaction of the principal and interest of each and every of such bonds, the estate hereby granted to the said trustees shall cease and be void, and the said premises hereby granted shall be immediately reinvested, in law and in fact, in the said company, without any entry or other act.

In testimony whereof the said Northern Railroad Company have caused their corporate seal to be hereunto, and to triplicates hereof, affixed, and the same to be signed by their president and treasurer, and the said trustees hereunto, and to triplicates hereof, set their hands and seals, all the day and year first above written.

[L. S.] THE NORTHERN RAILROAD COMPANY,
By W. RAYMOND LEE, *President.*

Seal'd and delivered in the presence of—
J. P. PUTNAM.

H. M. HOLBROOK, *Treasurer.*

GEO. T. ANGELL, countersigned.

GEORGE CURTIS. [L. S.]

WILLIAM J. HAFF, *as to George Curtis.*

W. A. WHEELER. [L. S.]

W'M C. MCVICKER, *as to W. A. Wheeler.*

JABEZ C. HOWE. [L. S.]

95 STATE OF NEW YORK,
Franklin County, ss:

On this 14th day of April, A. D. 1854, before me appeared William A. Wheeler, to me known to be the same person described in, and who executed the foregoing instrument as one of the parties thereto, and duly acknowledged the execution thereof.

JOHN HUTTON,
County Judge of said County and Counsellor at Law.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

I, George T. Angell, a commissioner for the State of New York, residing in Boston, in said Suffolk, do certify that, on the seventh day of April, in the year one thousand eight hundred and fifty-four, personally appeared before me in said Boston, W. Raymond Lee, president of the Northern Railroad Company, and Henry M. Holbrook, its treasurer, also, Jabez C. Howe, all personally known to me to be the individuals described in, and who have executed the within instrument, and they all then and there severally acknowledged to me that they executed the same. And the said W. R. Lee, being by me duly sworn, did depose and say that he resides in the city of Roxbury, in the State of Massachusetts; that he is the presid'nt of the Northern Railroad Company, the corporation described in, and which has executed the foregoing instrument; that the seal thereto affixed is the corporate seal of the said corporation, and was affixed by the authority of said corporation, and that he thereupon subscribed his name thereto as such president, by the like authority; and the said Henry M. Holbrook, being duly sworn, did depose and say that he resides at Boston, in the State of Massachusetts, that he is the treasurer of said corporation, and that he subscribed his name to the instrument by the authority of said corporation.

96 In witness whereof, I have hereunto set my hand and official seal, at Boston aforesaid, upon the day aforesaid.

[SEAL.] GEO. T. ANGELL,
Commissioner for the State of New York.

STATE OF NEW YORK,
Secretary's Office, ss:

I hereby certify that George T. Angell, of Boston, county of Suffolk, and State of Massachusetts, was, at the time of taking the annexed acknowledgment, a commissioner for the State of New York, to take the proof and acknowledgment of deeds and other instruments to be used or recorded in this State, and to administer oaths and affirmations, pursuant to chapter 270, laws of 1850; and that such commissioner was, at the time aforesaid, duly authorized to take the same: and that I have compared the signature of the said commissioner to the certificate subjoined to the annexed instrument, with the signature of such commissioner deposited in this office, and have also compared the impression of the seal of such commissioner deposited in this office, and I verily believe the signature and impression of the seal to the said certificate to be genuine.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this eleventh day of April, one thousand eight hundred and fifty-four.

[L. S.] E. W. LEAVENWORTH,
Secretary of State.

CITY AND COUNTY OF NEW YORK, *ss:*

On the 10th day of April, A. D. 1854, before me personally came George Curtis, to me known to be the individual described in, and who executed the foregoing instrument and he acknowledged that he executed the same for the purposes therein mentioned.

WILLIAM J. HAFF,
Commissioner of Deeds.

97 STATE OF NEW YORK,
City and County of New York, ss:

I, Richard B. Connolly, clerk of the city and county of New York, do hereby certify that William J. Haff, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a commissioner of deeds for said city and county, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the county, the 10th day of April, 1854.

[L. S.] RICHARD B. CONNOLLY, *Clerk.*

G.

Copy deed of surrender.

Whereas the Northern Railroad Company, a corporation created by and existing under the laws of the State of New York, did, on the 15th day of December, eighteen hundred and fifty-one, and on the seventh day of April, eighteen hundred and fifty-four, in conformity with their by-laws, execute two certain indentures of trust and mortgage of the said dates respectively to George Curtis, of the city of New York, banker; William A. Wheeler, of Malone, in the county of Franklin, and State of New York, esquire; and Jabez C. Howe, of the city of Boston, merchant, and the survivor or survivors of them, and their successors in said trust conveying to them the railroad of the said company, constructed and to be constructed, extending from Lake
98 Champlain to Ogdensburgh, together with the franchise of said company, and, all and singular, the railway, rails, bridges, fences, privileges, rights, and real estate, buildings and fixtures of every kind and description then owned by said company, or which should thereafter be owned by them, and all the tolls, income, issue, and profits to be had from the same; and also the lands used and occupied for the railway depots or stations, with all the buildings standing thereon, or which should be procured therefor, together with all the locomotive engines and tenders, passenger cars and freights cars, shops, tools, and machinery then owned or thereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad of the said company, then constructed and to be constructed:

To have and to hold the said granted property to the said Curtis, Wheeler, and Howe for the uses and purposes as set forth in said indentures, and more particularly to secure to such person or persons as should become the holders of the bonds of said company, specified or referred to in said indentures, the payment of the principal and interest of the said bonds; subject, however, to the possession, control, and management

of the directors of said company, so long as the said company should well and truly pay the interest and principal of the said bonds, according to their tenor, and should keep their covenants in said deed; which said conveyances were also made by said company subject to a prior mortgage to James Savage, John James Dixwell, and George N. Seymour made by the said company:

And whereas, among other things, it was covenanted, on the part of the said company with the said Curtis, Wheeler, and Howe, trustees as aforesaid, and their successors, that the said company shall make such further conveyances, assurances, or instruments as may by the said trustees be deemed necessary the more completely to carry into effect the intention of this mortgage:

And whereas, at a special term of the supreme court of the
99 State of New York, held at the city hall, in the city of New York, on the twentieth day of May, eighteen hundred and fifty-four, it was ordered and decreed by the court, that John S. Eldridge, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, esquire, be appointed one of the trustees under said two indentures, in the place and stead of said Curtis, who had resigned his said trust:

And whereas the said trustees now deem it necessary the more completely to carry into effect the intention of the said mortgage and to perfect the security of the holders of said mortgage bonds, that the said company should execute to the said trustees a deed of surrender of the possession of all the property, rights, and privileges conveyed to the said trustees by the said company, by said two deeds of mortgage, the same to be held by said trustees for the use and purposes mentioned in said deed of mortgage, and have demanded of this corporation such a surrender:

And whereas a default in the payment of interest due on said bonds had occurred, and the same company deem it to be their duty to do all in their power to perfect the security of said bondholders, and are of opinion, under the existing circumstances of the company, that, in order to secure the due payment of the interest of said bonds, such a surrender of possession on their part is necessary, and that the right of possession given to the directors in said indentures should be waived by them:

And whereas the board of directors of said company have voted that this instrument of surrender of possession of said property should be made, the same to be held by the said Eldredge, Wheeler, and Howe, for the uses and purposes mentioned in said indenture of mortgage.

Now, therefore, be it known that the said Northern Railroad Company, in consideration of the premises and of one dollar received by them of the said Eldredge, Wheeler, and Howe, trustees as aforesaid,
do hereby transfer, set over, yield up, surrender, and deliver pos-
100 session to the said Eldredge, Wheeler, and Howe, as such trustees, of all the property, estate, rights, and privileges, lands, tenements, and franchises conveyed in said mortgage to them as trustees by said two indentures of mortgage:

To have and to hold all the above surrendered or granted property to the said Eldredge, Wheeler, and Howe, and their successor, who may be appointed in conformity to the provissions of said indentures of mortgage, in trust and in mortgage, and for the uses and purposes and in the manner set forth in said indentures and no other.

Provided, however, that the said trustees may, if at any time it shall on their judgment be for the interest of the said bondholders, surrender up to the said company the possession of the property so heretofore

mortgaged subject to the mortgage under which the same is or shall be held.

In witness whereof the said Northern Railroad Company have caused this instrument to be executed and acknowledged by the president, countersigned by the treasurer, and authenticated by the seal of the company, this sixth day of October, in the year of our Lord eighteen hundred and fifty-four.

THE NORTHERN RAILROAD COMPANY,
[L. S.] By W. RAYMOND LEE, *President.*

Executed and delivered in the presence of—
J. P. PUTNAM.
Countersigned.

We, the undersigned, trustees for the bondholders in the indenture of mortgage referred to in the foregoing instrument, do hereby accept the surrender of the property conveyed to us by said indenture of mortgage, and of all rights and privileges thereby conveyed, subject to the conditions, limitations, powers and provisions in the said indenture mentioned and the foregoing written instrument.

101 In witness whereof we have hereunto set our hands and seals this sixth day of October, in the year of our Lord eighteen hundred and fifty-four.

W. A. WHEELER.
J. C. HOWE.
GEO. CURTIS.

In the presence of—
J. P. PUTNAM.

H.

At a special term of the supreme court of the State of New York, held at the court-house in Schenectady, on the 8th day of April, 1856: Present, Hon. C. L. Allen, justice of said court.

Supreme court, St. Lawrence County.

WILLIAM A. WHEELER, ANTHONY C. BROWN, and John S. Eldredge, trustees, &c., *against* THE NORTHERN RAILROAD COMPANY.

Judgment of foreclosure of mortgage.

On reading and filing due proof by affidavit of the due service of the summons and complaint in this action, upon Samuel C. F. Thorndike, esq., the treasurer of the said defendants, on the 27th day of February, 1856, and it appearing by the affidavit of James C.

102 Spencer, esq., the attorney for the plaintiffs in this action, that no copy of an answer nor demurrer to said complaint has been served upon the said attorney for the plaintiffs; and that none of the defendants are infants or absentees; and it further appearing by the certificate of the clerk of this court in the county of St. Lawrence, that the notice of the pendency of this action was duly filed in the office of the clerk of this court, in said county of St. Lawrence, on the twenty-first day of February, 1856; that due notice of the pendency

of this action was duly filed in the office of the clerk of this court in the county of Franklin, on the *the* twenty-second day of February, 1856, and that due notice of the pendency of this action was duly filed in the office of the clerk of this court in the county of Clinton, on the twenty-third day of February, 1856—being the counties in which the real estate previously mentioned and described in the mortgage and complaint are situate—and it appearing upon a computation made in open court that there was due to the plaintiffs, at the date of this computation, as trustees for the holders of the bonds particularly specified and set forth in said complaint, the sum of three millions and seventy-seven thousand dollars for principal, with the sum of four hundred and forty-seven thousand three hundred and sixty-one $\frac{44}{100}$ dollars, for interest thereon to the date of this decree, amounting in the whole to three millions five hundred and twenty-four thousand three hundred and sixty-one dollars and $\frac{44}{100}$, and being the whole amount secured by said mortgages.

On reading and filing the affidavit of James C. Spencer, esq., attorney and counsel for the plaintiffs, of service of notice of application for this judgment to the defendants in this action, and on reading and filing the petition of W. H. Harrison, one of the bondholders, and the cestui que trust of plaintiffs, and on motion of James C. Spencer, attorney for the plaintiffs, it is ordered, and adjudged, and decreed that, all and singular, the mortgaged premises mentioned in the complaint in this action, and hereinafter particularly described, as well as all the personal
103 property of any and every name whatsoever, in said mortgages mentioned and hereinafter particularly specified, be sold together, in one parcel, subject to any rights which James Savage, John James Dixwell, and George N. Seymour, as trustees of the bonds known as the first mortgage bonds of the Northern Railroad Company, issued under and by the provisions of a prior mortgage of said defendants, bearing date April 29, 1850, and particularly described in the complaint in this action, may have and possess therein.

And it is further ordered, adjudged, and decreed that Hon. William C. Brown, counsellor at law at Ogdensburgh, St. Lawrence County, New York, be, and is hereby, appointed referee, to execute the above order of sale, and that such sale, be made at public auction, at the court-house, in the town of Malone, in the county of Franklin.

And it is further ordered, adjudged, and decreed that the said referee give public notice of such sale as follows: The time and place of such sals shall be publicly advertised by said referee previously for the term of six weeks, as follows: a written or printed notice specifying the time and place of such sale shall be posted up in three public places in the town where such sale is to be held. A copy of such notice shall be printed and published for six weeks, at least three times in each week in two of the daily newspapers printed in the city of New York, and in the same manner, in two of the daily newspapers in the city of Boston, and at least once in each week in some newspaper printed in each of the counties of St. Lawrence, Franklin, and Clinton; and a copy of said notice shall in like manner be posted in the Merchants' Exchange in the city of New York, and at the Merchants' Exchange at the city of Boston, six weeks before said sale, which said notice shall describe the real estate as fully as the same is described in the mortgages, and need not mention or describe the personal property, except in general terms, only as the same is described in said mortgages, save
104 that referred to in Schedule A, in the complaint in this action, which shall be particularly specified and described.

And it is further ordered, adjudged, and decreed that upon such sale the said referee execute and deliver to the purchaser or purchasers of said mortgaged premises and property, a deed or deeds of the premises so sold, and that out of the moneys arising from such sale, after deducting the amount of his fees and expenses in such sale, and lien or liens for taxes or assessments upon said premises and property so sold, at the time of such sale, the said referee first pay to the plaintiffs, or their attorney, the amount of their costs and disbursements to be hereafter determined and certified by a justice of this court, with interest from settlement; and also pay to the plaintiffs the amount due, as aforesaid, upon the said mortgages for principal and interest, with legal interest thereon from the date of this decree, or so much thereof as the purchase money of the said mortgaged premises will pay of the same, and that he take the receipt of the plaintiffs, or their attorney, for the amount so paid, and file the same with his report of the sale; that he make a report of such sale and file it with the clerk of this court, in the county of St. Lawrence, with all convenient speed, after such sale; that the amount so paid by said referee (if paid) to the plaintiffs, after deducting therefrom said costs and the proper charges and fees accruing to and costs otherwise incurred by the plaintiffs, as such trustees, in heretofore and hereafter performing and fulfilling their trust, shall be paid by the plaintiffs to the holders of the second issue of bonds executed and issued by defendants, distributing the same among the said holders according to their respective rights and interest.

And it is further ordered, adjudged, and decreed that if no other person or persons shall bid upon the sale of said mortgaged premises and property a sum equal to the amount due upon the said mortgages for principal and interest, and the costs and expenses of this action
105 over and above all prior mortgages thereon, that it shall be lawful for the plaintiffs, or one or more of them, in the name of the whole, and they are hereby authorized at such sale to bid in and become the purchasers of the mortgaged property, and every part thereof in trust to sell the same for the benefit of the bondholders, at such sum as in their discretion they may deem most beneficial for the said bondholders; and they are hereby directed to bid therefor not less than two millions of dollars. And if said plaintiffs shall bid in such mortgaged property as herein authorized and provided for, the said referee shall execute to them the like deeds and conveyances as are hereinbefore directed to be executed to any other purchaser or purchasers, said plaintiffs first paying all fees, costs, and expenses hereinbefore particularly specified.

And it is further ordered, adjudged, and decreed that the said plaintiffs, or a major part of them, in their discretion, may sell such portions of the property as may not be necessary or wanted for the use of the railroad, and they are hereby authorized to execute all necessary and proper deeds and conveyances upon such sale, or they may lease the same for a term of *a* years, or from year to year, for the benefit of the bondholders, and may, upon the organization of a new railroad corporation under the provisions of the general law on that subject, or otherwise, transfer and assign the property necessary for the purposes of the railroad to the new corporation, and receive in payment stock to the estimated value of said property, deductiong the amount of said prior mortgage to said Savage, Dixwell, and Seymour, and may transfer such stock to the bondholders in proportion to the amount of bonds held by them respectively. Provided, however, that such corporation, upon such transfer, shall first indemnify and save harmless the said

plaintiffs, or their successors, or the successor of either one of them, in the trust hereby created, against any and all legal and just liabilities then outstanding against them, on account of any act or engagement in the management of the trust property, and shall also pay the
106 just and proper charges and expenses of the plaintiffs, or their agents or successors, or the successor of either one of them, in the management of the trust property.

And is is further ordered, adjudged, and decreed that if, upon the distribution of the stock as hereinbefore mentioned, any bondholder shall prefer to receive money instead of stock, the trustees may sell his or her portion of the stock, and pay him or her the proceeds thereof in money.

And it is further ordered, adjudged, and decreed that until the sale of the said mortgaged property by the aforesaid referee, or if the trustees shall become the purchasers thereof in trust to sell the same for the benefit of the bondholders as aforesaid, then until they shall sell the general railroad property for cash, or by transferring the same to such new corporation, the said trustees, or a major part of them, may continue to operate the said railroad, and receive the rents, profits, and income thereof, and appoint all necessary agents and subordinates for the complete operation of said road; and they may purchase the necessary supplies, fuel, iron, ties, etc., and keep the road, rolling stock, fixtures, and appurtenances in good and proper repair, preventing all waste, injury, and destruction to the same, or either of them, or any part thereof; and also pay and discharge any just claim upon the said trust property, when in the opinion of the said trustees, or a major part of them, the interest of the bondholders will be thereby promoted; and loan all necessary sums of money, when the same shall be necessary for the payment of interest on said prior mortgage to the said Savage, Dixwell, and Seymour, and repay the same, as also any prior loan heretofore made for that purpose, paying and defraying the necessary expenses of any and all of these items out of the rents, profits, and income of said property; and also keep down the interest which from time to time shall accrue upon said prior mortgage to said Savage, Dixwell, and Seymour. And the said trustees, or their suc-
107 cessors in the trust, are hereby authorized to bring any suit or suits which may be necessary in the premises, and for the recovery of any debts for tolls, freight, or otherwise, which belong to them by virtue of the mortgages in said complaint described, and for any property, or injury to property, which was secured to them by such mortgages, or either of them, and to defend in any suit brought against them, or either of them, in respect to the mortgaged property, or any part thereof.

And it is further adjudged, ordered, and decreed that the defendants, and all persons and corporations claiming under them, subsequent to the commencement of this action and the filing of the notice of the pendency of this action, and all other persons or corporations who have any liens or claims thereon, by or under such subsequent judgments or decree, either as purchasers or incumbrances, or otherwise, be forever barred and precluded of all right, title, interest, and equity of redemption in the said mortgaged premises and property so sold, and every part thereof.

And it is further ordered, adjudged, and decreed that the said plaintiffs, or either of them, are at liberty to apply to this court from time to time, upon the foot of this judgment and decree, for such further directions as they may be advised to ask for, either in reference to commis-

sions or the disposal of the proceeds of the trust property or the income thereof, as to any other matters connected therewith, upon such notice to the cestui que trusts as the court may hereafter prescribe.

The following is a description of the mortgaged premises and property hereinbefore mentioned, and also a copy of Schedule A, hereinbefore referred to, reference being had for a full enumeration and description of the residue of the personal property mortgaged to Schedule B, heretofore referred to, as attached to the complaint.

DESCRIPTION.

108 The several mortgaged premises are situate in the co'nties of St. Lawrence, Franklin, and Clinton, and within the bounds of the several towns in the said respective counties through which the Northern Railroad has been located and constructed, in accordance with the act of incorporation of the Northern Railr'ad Company, passed May 12, 1845, and all amendments thereto, viz: The towns of Oswegatchie, Lisbon, Potsdam, Madrid, Norfolk, Stockholm, and Lawrence, in the county of St. Lawrence; the towns of Moira, Bangor, Malone, Burke, and Chateaugay, in the county of Franklin; the towns of Clinton, Ellenburgh, Chazy, Mooers, and Champlain, in the county of Clinton; the said railroad extending from Lake Champlain, and including within its eastern terminus what is known as the Rouse's Point Bridge, Pier, or Crossing, or so much thereof as has been constructed by the defendants under the act entitled "An act authorizing the Northern Railroad Company to extend its pier at Rouse's Point, on Lake Champlain," passed July 1, 1851, and also including the Champlain branch of said road to the river St. Lawrence, at Ogdensburgh, a distance of about one hundred and seventeen miles, and located and constructed in the aforesaid towns of the counties of Clinton, Franklin, and St. Lawrence, and said premises and property mortgaged are described in said mortgages without reference to any schedule thereunto attached, describing more minutely the personal property mortgaged as follows, the said description referring therein to the date of the execution of the said mortgage:

"The railroad of the Northern Railroad Company, constructed or to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with the franchise of the said company, and all and singular the railway, rails, bridges, fences, privileges, rights, and real estate, buildings, and fixtures of every kind and description now owned by the said com-
109 pany, or which shall hereafter be owned by them, and all the tolls, income, issues, and profits to be had from the same, and all the land used and occupied for railway depots or stations, with all the buildings standing, or hereafter to be erected thereon, and all real estate now owned, or hereafter to be acquired by the said company, together with all the locomotives, engines and tenders, passenger cars, freight cars, and all other cars and shops, tools, and machinery, and all other personal property whatsoever, of every name and nature, now owned or hereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad of the said company, now constructed or to be constructed.

SCHEDULE A.

Comprising the several articles of personal property owned by the Northern Railroad Company, covered by the two mortgages to the

plaintiffs, or one of them, and which is directed in the foregoing judgment and decree to be sold by the referee, and claimed in the complaint as not being affected or covered by the mortgage to Savage, Dixwell, and Seymour:

1st. The steamer "Boston," her engines, boilers, boats, tackle, apparel, and furniture; a claim and demand against George Parish for taking and converting the same.

2d. The boats and vessels comprising what is known as the "Ogdensbugh Railroad Line" of canal boats on Lake Champlain, and consisting of the following-named canal boats, barges, and vessels, with their and each of their sails, rigging, tackel, apparel, and furniture:

The "Richelieu," "Le Grasse," "Raquette," "Oswegatchie," "St. Regis," "Niagara," "Michigan," "St. Lawrence," "Erie," "Saranac," "Ottawa," "Champlain," "Sorel," and "Ausable."

3d. All the household furniture and hotel furniture contained in, and appertaining to, the hotel known as the "Station House Hotel," at Rouse's Point, in the county of Clinton, in the State of New York.

110 4th. A certain bond, executed by John H. Crawford and Philo Chamberlain to William T. Eustis, of Boston, dated the sixteenth day of December, A. D. 1851, for the penal sum of one hundred and fifty thousand dollars, conditioned for the repayment, within five years from that date, of all sum or sums of money which should from time to time be loaned or advanced by said William T. Eustis to said Crawford and Chamberlain, with semi-annual interest, and further conditioned that said Crawford and Chamberlain would secure the payment of said money by mortgages upon any steam propellers then owned, or which might thereafter be owned, by said Crawford and Chamberlain, and by the transfer of policies of insurance thereon, which bond belonged to the Northern Railroad Company on the seventh day of April, 1854, and there was then due or owing and unpaid thereon the sum of one hundred thousand dollars, with interest thereon from the sixteenth day of December, A. D. 1853.

Also a claim against Geo. M. Dexter and John P. Putnam for the said bond, which is in their possession, and claimed by them.

And it is further ordered, adjudged, and decreed that the judgment of this court and the decree in this action be duly entered in the clerk's office of the county of St. Lawrence, by the clerk thereof, as of this date, and that the petition, affidavits, and other papers used on the hearing at this term of this court, be duly filed in the same office and of the same date.

K.

William C. Brown, as referee, to William A. Wheeler, Anthony C. Brown, and John S. Eldredge.

Copy deed.

111 This indenture, made this twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six, between William C. Brown, of Ogdensburgh, in the county of St. Lawrence, and State of New York, the referee hereinafter mentioned, party of the first part, and William A. Wheeler, of Malone, in the county of Franklin, in said State, Anthony C. Brown, of Ogdensburgh aforesaid, and John S. Eldredge, of Boston, in the State of Massachusetts, trustees for the holders of the bonds of the Northern Railroad Company, known

as the second issue of bonds of said company, parties of the second part, witnesseth: Whereas at a term of the supreme court of the State of New York, held at the court-house, in Schenectady, on the eighth day of April, A. D. 1856, it was, among other things, ordered, adjudged, and decreed by the said court in a certain cause then depending in said court wherein the parties of the second part, as such trustees as aforesaid, were plaintiffs, and the Northern Railroad Company were defendants, in the words following, to wit:

That all and singular, the mortgaged premises mentioned in the complaint in this action and hereinafter particularly described, as well as all the personal property of any and every name whatsoever in said mortgage mentioned and hereinafter particularly specified, be sold in one parcel, subject to any rights which James Savage, John James Dixwell, and George N. Seymour, as trustees of the bonds known as the first mortgage bonds of the Northern Railroad Company, issued under and by the provisions of a prior mortgage of said defendants, bearing date April 29th, 1850, and particularly described in the complaint in this action, may have and possess therein. And it is further ordered, adjudged, and decreed, that Honorable William C. Brown, counsellor at law, at Ogdensburgh, St. Lawrence County, New York, be, and is hereby, appointed referee, to execute the above order of sale, and that such sale be made at public auction at the court-house in the town of Malone, in the county of Franklin; and it is further ordered, adjudged, and de-
112 creed, that the said referee give public notice of such sale as follows: The time and place of such sale shall be publicly advertised by said referee previously for the term of six weeks, as follows: A written or printed notice, specifying the time and place of such sale, shall be posted up in three public places in the town where such sale is to be held; a copy of such notice shall be printed and published for six weeks, at least three times in each week, in two of the daily newspapers printed in the city of New York, and in the same manner in two of the daily newspapers in the city of Boston, and at least once in each week in some of the newspapers printed in each of the counties of St. Lawrence, Franklin, and Clinton; and a copy of said notice shall, in like manner, be posted in the Merchants' Exchange in the city of New York, and at the Merchants' Exchange in the city of Boston, six weeks before said sale; which said notice shall describe the real estate as fully as the same is described in the mortgage, and need not mention or describe the personal property, except in general terms, only as the same is described in said mortgage, save that described in Schedule A, in the complaint in this action, which shall be particularly described and specified. And said decree further, among other things, provided that said referee should execute to the purchaser or purchasers of said mortgage, premises, and property, a deed or deeds of the premises so sold, and that out of the moneys arising from such sale, after deducting the amount of his fees and expenses on such sale and any liens for taxes and assessment, the said referee pay to the plaintiffs or their attorney their costs and disbursements, and also the sum of three millions five hundred and twenty-four thousand three hundred and sixty $\frac{44}{100}$ dollars, the amount due them upon the said mortgages, with interest from the date of the said decree, or so much thereof as the purchase money of the said mortgage premises will pay of the same, and that he take the receipt of the plaintiffs or their attorney for the amount so paid, and file the same with his report of the sale and file it with the clerk of this court in the county of St Lawrence, with all convenient
113 speed after such sale. And whereas by a further order of the

said court made in the said action at a special term of said court held at the court-house in Canton, in the county of St. Lawrence, on the fourteenth day of October, A. D. 1856, the said referee was ordered that the item of property mentioned in said Schedule A, and being the fourth item therein, consisting of a certain bond of Crawford and Chamberlain, and a claim against Dexter and Putnam for the same, should not be sold with the rest of the property; and whereas the said William C. Brown, referee as aforesaid, and party of the first part to these presents, in pursuance of the said order and decree, did on the day of the date of these presents, sell at public auction at the court-house in the village of Malone aforesaid, the mortgaged premises and property described in said decree, except the said Crawford bond and said claim therefor and hereinafter particularly described, having first given public notice of such sale with a description of the mortgaged premises and property agreeably to the decree aforesaid, at which sale the said premises and property were struck off to the said parties of the second part as such trustees as aforesaid, for the sum of three millions of dollars, that being the highest sum bid for the same.

Now, therefore, this indenture witnesseth: That the said William C. Brown, as such referee as aforesaid, in order to carry into effect the said sale, so made as aforesaid, in pursuance of the decree and by virtue of the statute in such case made and provided, and in consideration of the premises and of the sum of three millions of dollars paid by the said parties of the second part, as such trustees as aforesaid, to the said party of the first part, the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and doth by these presents grant, bargain, sell, alien, release, convey, and confirm unto the said parties of the second part, as such trustees as aforesaid, and to their heirs, successors, or assigns forever,

all and singular, the several mortgaged premises, situated in the
114 counties of St. Lawrence, Franklin, and Clinton, and within the bounds of the said respectives counties through which the Northern Railroad has been located and constructed in accordance with the act of incorporation of the Northern Railroad Company, passed May 12, 1854, and all amendments thereto, viz: The towns of Oswegatchie, Lisbon, Madrid, Potsdam, Norfolk, Stockholm, and Lawrence, in the county of St. Lawrence; the towns of Moira, Bangor, Malone, Burke, and Chateaugay, in the county of Franklin; and the towns of Clinton, Ellenburgh, Chazy, Moors, and Champlain, in the county of Clinton; the said railroad extending from Lake Champlain, and including within its eastern terminus, which is known as the Rouse's Point Bridge, Pier, or Crossing, or so much as has been constructed by the said Northern Railroad Company, under the act entitled, An act authorizing the Northern Railroad Company to extend its pier at Rouse's Point on Lake Champlain, passed July 1st, 1851; and also including the Champlain branch of said road to the River St. Lawrence, at Ogdensburgh, a distance of about one hundred and seventeen miles, and located and constructed in the aforesaid towns, in the counties of St. Lawrence, Franklin, Clinton, and said premises and property mortgaged, are described in said mortgage without reference to any schedule thereunto attached as follows, the said description referring therein to the date of the execution of the said mortgage, viz: The railroad of the Northern Railroad Company, constructed and to be constructed, the same being one hundred and seventeen miles in length, extending from Lake Champlain to Ogdensburgh, together with the franchise of the said company, and all and singular, the railway, rails, bridges, fences,

privileges, rights, and real estates, buildings and fixtures of every kind and description now owned by the said company, or which shall hereafter be owned by them, and all the tolls, income, issues, and profits to be had from the same, and all the land used and occupied for railway depots or stations, with all buildings standing or hereafter to be
115 erected thereon, and all real estate now owned or hereafter acquired by the said company, together with all the locomotives, tenders, and engines, passenger cars, freight cars, and all other cars, and shop, tools, and machinery, and all other personal property whatsoever, of any name or nature, now owned or hereafter to be acquired by the said company, and in any way belonging or appertaining to the said railroad of the said company, constructed or to be constructed. This sale and conveyance includes the several articles of personal property mentioned in Schedule A, attached to said complaint, and recited in said decree, and which are hereby granted and sold (except the fourth item of said schedule, comprising the Crawford bond and the claim therefor, which are expressly excepted,) viz: First, steamer "Boston," her engines, boilers, boats, tackle, apparel, and furniture, a claim and demand against George Parish for taking and converting the same. Second. The boats and vessels comprising what is known as the Ogdensburgh Railroad line of canal boats on Lake Champlain, and consisting of the following-named canal boats, barges, and vessels, with their and each of their sails, rigging, tackle, apparel, and furniture, viz.: The "Richelieu," "Le Grass," "Raquett," "Oswegatchie," "St. Regis," "Niagara," "Michigan," "St. Lawrence," "Erie," "Saranac," "Ottawa," "Champlain," "Sorel," "Ausable." Third. All the household furniture and hotel furniture contained in and appertaining to the hotel known as the Station House Hotel, at Rouse's Point, in the county of Clinton, in the State of New York, together with all and singular the rights, titles, privileges, members, hereditaments, and appurtenances to the premises or any of them belonging or in any wise appertaining. To have and to hold, all and singular, the said premises and property above mentioned and described, and hereby granted and conveyed, or intended to be, unto the said parties of the second part as such trustees as aforesaid, their heirs, successors, or assigns, forever.

116 In witness whereof I, the said referee, have hereunto set my hand and seal, the day and year first above written.

W'M C. BROWN. [L. S.]

Sealed and delivered in the presence of—
A. B. JAMES.

STATE OF NEW YORK,
St. Lawrence County, ss:

On this twenty-second day of October, A. D. 1856, before me, the subscriber, a justice of the Supreme Court, appeared W'm C. Brown, who acknowledged that he executed the foregoing instrument, and I certify that I know the person who made the said acknowledgment to be the individual described in, and who executed the said instrument.

A. B. JAMES,
Justice of the Supreme Court.

Recorded, December 31st, 1856, at 9 a. m.

E. H. NEARY,
Deputy Clerk.

117 L

Copy of final decree.

At a circuit special term of the supreme court of the State of New York, held at the court-house in Watertown, Jefferson County, December 12th, 1859:

Present, Hon. Joseph Mullin, justice.

FRANCIS B. CROWNINSHIELD AND OTHERS
ag'st
WILLIAM A. WHEELER AND OTHERS.

This cause having come on to be heard at the present term of the court, upon the pleading and proofs therein, and after hearing Mr. W'm C. Brown, of counsel for the plaintiffs, Mr. Joseph R. Flanders, of counsel for the second mortgage trustees, Mr. Cha's G. Myers, of counsel for the first mortgage bondholders, named in the complaint, and Mr. Geo. Morris, of counsel for second mortgage bondholders, named in the complaint; and on reading and filing proof, by affidavit, of the due publication of the preliminary decree, made in this action, and dated the 27th of September, 1859, and that no affidavit and notice of appearance has been served on the plaintiff's attorney, as provided by said preliminary decree, and due deliberation having been had in the premises, it is ordered adjudged, and decreed: That the agreement set forth in the answer of the said second mortgage trustees is conducive to the interests of all the said first and second mortgage bondholders, is approved and demanded by them, and is such an arrangement to
118 settle and adjust all the matters in litigation, in this cause, as the said trustees for the first and second mortgage bondholders ought to make, and the same is approved, ratified, and confirmed by this court. And it is further ordered, adjudged, and decreed that the said two mortgages to Savage, Dixwell, and Seymour be, and the same are hereby, established and confirmed as a valid and effectual first lien and security upon, all and singular, the said railroad, extending from about the center of Lake Champlain to and including the terminus of said road, as located, to the bridge across the Oswegatchie River, in the village of Ogdensburgh, including the Champlain branch, and all other branches, tracks, and turn-outs, together with the franchise of the said corporation, and, all and singular, the railways, rails, bridges, fences, privileges, rights and real estate, buildings and fixtures, of every kind and description, whether owned by the said company at the time of the execution of the said mortgages, or either of them, to said Savage, Dixwell, and Seymour, or which have since become owned by the said company, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for railway depots and stations, with all the buildings standing thereon, or which shall be procured therefor, together with all the locomotives, engines and tenders, passenger cars, and freight cars, shops, tools, and machinery, owned by the said company at the time of the execution of either of said mortgages, or thereafter acquired by them, or by the said second mortgage trustees, and which may be now in their possession, and upon all other property of the said company, used or needful to be used in and about the operating of the said railroad.

And it is further ordered, adjudged, and decreed that the property described in the complaint, as enumerated in Schedule A, attached to

the complaint of said second mortgage trustees, for the foreclosure of their mortgages, and consisting, principally, of the steamer "Boston,"
or a claim for her, the Lake Champlain barges, the furniture in
119 the Station House at Rouse's Point, and the Crawford bond, or any part thereof, or the proceeds thereof, which shall be obtained by the said trustees for the second mortgage bondholders, their successors or assigns, shall either be held subject to the said mortgages to the said Savage, Dixwell, and Seymour, without liability on the part of the said second mortgage trustees for any loss or depreciation thereto, or, if converted into money or its equivalent, shall be applied to some of the following purposes, viz: To the payment of interest on first mortgage bonds, or liabilities incurred by said second mortgage trustees, to some permanent improvements to or upon the said mortgaged property, or invested in a sinking fund, to consist of said first mortgage bonds.

And it is further ordered, adjudged, and decreed that said second mortgage trustees, their successors and assigns, as representatives for the holders of second mortgage bonds, shall possess, occupy, use, enjoy, and operate, all and singular, the mortgaged property, so long as the interest and principal of said first mortgaged bonds are duly paid, pursuant hereto, and said second mortgage trustees faithfully keep, observe, and perform all the terms of the agreement set forth in the answer of said mortgage trustees, and during that time are to receive, dispose of, and control the rents, issues, and profits thereof, and they are hereby ordered and required, out of the net income of the railroad, after defraying the expenses, to keep in good repair and condition the railroad, and all the appurtenances, and to replace such of the rolling stock as shall become worn out or useless, so far as the business of the road requires, and to pay the interest on the said first mortgage bonds, and the residue of the net proceeds may be applied by them to the payment of the interest upon said second mortgage bonds, or invested in a sinking fund to be established for the payment and redemption of said first mortgage bonds, and to consist of said first mortgage bonds.

And it is further ordered, adjudged, and decreed that said mort-
120 gages to the said Savage, Dixwell, and Seymour do and shall extend over and shall be a lien upon all extensions, additions, and improvements to and upon the said railroad and real estate, which shall be made by the said second mortgage trustees, their successors or assigns, and to and upon all repairs and additions to the said rolling stock, and other personal property, and to and upon all locomotives, engines, and tenders, and passenger cars and freight cars, and all other cars and personal property which may be purchased or obtained by the said second mortgage trustees, their successors or assigns, to be used in and about the operating of the said road, whether the same are purchased or obtained to replace such as may become worn out, lost, or destroyed, or to extend and increase the capacity and business of the said road.

And it is further ordered, adjudged, and decreed that the time for the maturity for the said mortgages to the said Savage, Dixwell, and Seymour, is extended for the term of ten years beyond the first day of July, A. D. 1859, provided the interest is paid as heretofore, within six months after the same becomes payable, and upon production and surrender of the coupons or warrants for such interest. And provided, also, that the said second mortgage trustees, their successors or assigns, shall deliver, upon request, to all the first mortgage bondholders, or to the first mortgage trustees, in behalf of such bondholders, within three months after the date of this decree, coupons or warrants for the

semi-annual interest which would accrue upon such bonds during such extended period, at the rate of seven per centum per annum, and which are to be annexed to and form part of the bonds to which they refer. And in case of non-payment of any one of said instalments, or any part thereof, for six months beyond the time herein allowed, when properly demanded, this extension shall cease and be at an end. And upon any such default, the said plaintiffs, or their successors in said trust, shall be at liberty to apply for, upon the foot of this decree, and will
121 be entitled to have, a judgment for foreclosure and sale, in such form as their rights, as hereby established, entitle them to.

And it is further ordered, adjudged, and decreed that the said plaintiffs, their successors or successor, shall be at liberty to apply summarily, upon the foot of this decree, for relief, in case they shall at any time consider that the second mortgage trustees do not properly administer or operate said railroad, or waste or misuse the property in their hands as trustees aforesaid, or fail to keep, all and singular, the mortgaged property in good repair and condition, and the rolling stock and other personal property restored and replaced as fast as the same wears out or deteriorates, or do not observe, keep, and perform all the terms of said agreement, as set forth in the answer of the second mortgage trustees, to the end that the court may grant such relief, without delay, as may be requisite and equitable, and may prevent the security of said mortgages to said Savage, Dixwell, and Seymour, from being impaired.

And it is further ordered, adjudged, and decreed that the said second mortgage trustees shall be entitled to appropriate, use, mortgage, and, if necessary, sell, on reasonable public notice, the following described property, which has been acquired by them, if necessary for the purpose of defraying expenses, and paying liabilities incurred by them, in the discharge of their trust, and to raise money to pay interest on said first mortgage bonds, viz:

Locomotives, known by the name of "G. V. Hoyle," "Stag," "Fawn," "Sorel," and "Richelieu." Freight cars, known as numbers sixty-three, one hundred sixty-three, two hundred twenty, eighty-eight, and fourteen. Cattle cars, known as numbers two, four, five, and six; and all the fuel and shop stock now on hand, belonging to the trust. But all of such property, or the proceeds thereof, which shall not be used or applied for the purposes aforesaid, shall be held subject to said mortgages, to the first mortgage trustees.

122 And it is further ordered, adjudged, and decreed that said first mortgage trustees, and their successors, shall at all times have full and open access to, over, and upon all the said railroad property, real and personal, and to all books and vouchers of the said second mortgage trustees, to the end that the may see that said road, its rolling stock, and other appurtenances, are kept in good repair and condition, the first mortgage security kept good, and said agreement fulfilled. And said first mortgage trustees shall be paid out of the earnings of said road, for their services in the premises, the sum of one thousand dollars each, per annum, payable quarterly, from the dates of their respective appointments, besides their expenses.

And it is further ordered, that the costs of each of the parties who have appeared in this action, be paid by said second mortgage trustees, out of the funds in their hands, arising from the receipts of said road.

Let the papers be filed, and this decree entered, in the office of the clerk of St. Lawrence County.

(Enter,) J. MULLIN.

ST. LAWRENCE COUNTY, *Clerk's Office, ss:*

I hereby certify that the foregoing is a true and correct copy of a decree entered in this office. And I further certify, that I have compared the same with such entry, and it is a correct transcript of such original entry, and of the whole thereof.

Witness my hand and seal, this 16th day of December, A. D. 1859.

[L. S.] T. H. FERRIS,
Deputy Clerk.

Final judgment was perfected, pursuant to the foregoing decree, December 16, 1859.

W'M C. BROWN,
Pl'ffs' Att'y, Ogdensburg, N. Y.

123 M.

Supreme court, county of St. Lawrence.

CALVIN W. GIBBS, AS SOLE SURVIVING EXECUTOR of the last will and testament of James G. Hopkins, deceased,
against
THE NORTHERN RAILROAD COMPANY. } [Stamp.]

To the Northern Railroad Company, defendant:

You are hereby summoned to answer to the complaint of Calvin W. Gibbs, as sole surviving executor of the last will and testament of James G. Hopkins, deceased, plaintiff, which will be filed in the office of the clerk of St. Lawrence County, and to serve a copy of your answer on the subscribers, at Ogdensburgh, N. Y., within twenty days after the service of this summons, exclusive of the day of service, or the plaintiff will apply to the court for the relief demanded in the complaint.

BROWN & HASBROOCK,
Plaintiff's Attorneys.

ST. LAWRENCE COUNTY, *ss:*

L. Hasbroock, jr., being duly sworn, says that he personally served the annexed summons upon the Northern Railroad Company, the defendant therein named, on the 10th day of April, 1866, at Ogdensburgh, N. Y., by delivering to, and leaving with, Samuel C. F. Thorndike, the treasurer thereof, at the same time and place, a true copy thereof, and that he knew the said person served to be the treasurer of the said defendant.

L. HASBROOCK, JR.

Sworn, etc., before me this 12th day of May, 1866.

R. W. JUDSON,
Notary Public.

124 Supreme court of St. Lawrence County.

CALVIN W. GIBBS, SOLE SURVIVING EXECUTOR of James G. Hopkins, deceased,
against
THE NORTHERN RAILROAD COMPANY, OF NEW York.

The plaintiff in this action, by Brown and Hasbroock, his attorneys,

complains as above, and states to the court, that the defendant, The Northern Railroad Company, *were* incorporated under and by virtue of the act of legislation of the State of New York, entitled "An act to provide for the construction of a railroad from navigable waters of the great western lakes to Lake Champlain," *proposed* May 14, 1845.

That about one million five hundred thousand dollars of the capital stock, provided for by said charter, was actually paid in in cash.

That the plaintiff, as such executor as aforesaid, is the holder and owner of a portion of said capital stock, and a stockholder of said company.

That said corporation obtained other large sums of money at divers times prior to October 1, 1850, by having the same principally in bonds, secured by mortgages on the road and property.

That, on the first day of October, 1850, the said corporation had contracted and then owned a railroad, pursuant to its charter, from Ogdensburgh to Rouse's Point, and "equipped" the same.

That said corporation "operated" the said railroad from the date last aforesaid until October, 1854.

That the said corporation has for more than one year—to wit, for twelve years—neglected and refused to redeem its notes and other evidence of debt in specie or other lawful money of the United States. That said corporation owes a large amount and over one million dollars of notes and other evidences of debt, which *are* issued by the said corporation prior to October, 1856, and which have ever since remained due and "outstanding" against them, and which it has refused and, during all that time, neglected to redeem or pay.

That said corporation has for more than one year, and ever since October, 1854, wholly suspended the ordinary business of such incorporation.

That during the period aforesaid, the said corporation has not at any time operated the said road, carried any freight or passengers, or transacted any of the ordinary business provided for in and by the said act.

Whereupon the plaintiff demands judgment, that said corporation, The Northern Railroad Company, may be deemed and adjudged to have surrendered the rights, privileges, and franchises, granted by its acts of incorporation, and be decreed, adjudged, and declared dissolved, that the plaintiff may recover his costs out of the effects of the corporation; that one or more trustee or trustees, receiver or receivers, may be appointed by this honorable court to settle the affairs of said corporation and to distribute the surplus of its effects, if any should remain after payment of its lawful debts, among its stockholders. And that the officers of the corporation, and all other persons may be enjoined and restrained from intermeddling with the books, papers, property, or effects of said corporation.

And that the plaintiff may have such other or such further relief as may be agreeable to equity.

BROWN & HASBROOCK,
Plaintiff's Attorneys.

ST. LAWRENCE COUNTY, *ss:*

Calvin W. Gibbs, of Ogdensburgh, being duly sworn, says he is the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of *is* own knowledge, except as to the matters therein stated on information and belief, and as to these matters he believes it is true.

CALVIN W. GIBBS.

Sworn on this 2nd day of April, 1866, before me.

J. C. BARTER,
Justice of the Peace.

126 Supreme court.

CALVIN W. GIBBS, EXECUTOR OF JAMES G. Hopkins,
vs.
THE NORTHERN RAILROAD COMPANY.

Notice of retainer.

Please take notice that we have been retained by, and hereby appear for, the defendant, The Northern Railroad Company in the above-entitled action, and that we demand a copy of the plaintiff's complaint therein, which may be served on us at Ogdensburgh, St. Lawrence County, N. Y.

Dated May 14, 1866.

MORRIS & VARY,
Defendant's Attorneys.

To BROWN & HASBROOCK,
Plaintiff's Attorneys.

Supreme court.

CALVIN W. GIBBS
against
THE NORTHERN RAILROAD COMPANY.

ST. LAWRENCE COUNTY, *ss:*

L. Hasbroock, jr., being duly sworn, says he is one of the attorneys for plaintiff in this action; that more than twenty days have elapsed since this service of the summons upon the defendants herein, and that no answer or demurrer has been received on the part of the defendant.

L. HASBROOCK, JR.

Sworn, etc., before me this 14th day of May, 1866.

EDWARD C. JAMES,
Notary Public.

127 At an adjourned special term of the supreme court, held at the chambers of Hon. A. B. Jones, in the village of Ogdensburgh, in the county of St. Lawrence, on the 15th day May, 1866:

Present, Hon. A. B. James, justice.

CALVIN W. GIBBS, EXECUTOR OF JAMES G. Hopkins, deceased,
against
THE NORTHERN RAILROAD COMPANY.

On reading and filing the affidavit of L. Hasbrook, jr., that no answer or demurrer has been received in this action, and due proof having been made of the service of the summons upon the defendant more than twenty days prior thereto, and upon such consideration of this matter

alleged in the complaint, and on motion of Mr. William C. Brown, of counsel for the defendants, having been heard in opposition, it is ordered that the said defendant, The Northern Railroad Company, be, and are hereby, decreed and adjudged to have surrendered the rights, privileges, and franchises granted by its acts of incorporation, and is hereby decreed, adjudged, and declared to be dissolved; that William J. Averill, of Ogdensburgh, be, and hereby is, appointed the general receiver of the said corporation, defendant, with the same powers as receivers appointed in proceedings for the voluntary dissolution of corporations, upon his executing a bond in the usual form, to the people of the State of New York, in the penalty of ten thousand dollars, conditioned for the faithful discharge of his duties as such receiver, with one or more sufficient sureties to be approved by one of the justices of this court, and to be filed in the office of clerk of St. Lawrence County.

Let judgment be rendered as above, with costs.

A. B. JAMES,
Justice Supreme Court.

128 Supreme court.

CALVIN W. GIBBS, EXECUTOR OF JAMES G. Hopkins, *against* THE NORTHERN RAILROAD COMPANY.	Judgment, May 24, 1866.

This cause having come on to be heard upon the complaint above, at a special term of this court, held at the chambers of Justice James, in Ogdensburgh, on the 15th day of May, 1866, and William C. Brown, of counsel for the plaintiff, and Bennett H. Vary, of counsel for the defendant, having been heard, and the court now, after due deliberation, having made and filed the findings and decisions, it is, in accordance therewith—

Ordered, adjudged, and decreed, that the defendant, The Northern Railroad Company, a corporation created under and by virtue of the laws of the State of New York, has surrendered the rights, privileges, and franchises, granted by its acts of incorporation, and is hereby decreed, adjudged, and declared to be dissolved.

It is further ordered, adjudged, and decreed, that W'm J. Averill, esq., of Ogdensburgh, in the county of St. Lawrence, and State of New York, be, and he hereby is, appointed the receiver of the said corporation, with the same powers as receivers appointed on the voluntary dissolution of corporations, upon his executing a bond in the usual form to the people of the State of New York, in the penalty of ten thousand dollars, conditioned for the faithful performance of his duties as such receiver, with one or more sufficient sureties, to be approved by one of the justices of this court, and to be held in the office of the clerk of St. Lawrence County.

And it is further adjudged that the plaintiff, as executor as aforesaid, have judgment for his costs and disbursements in this action as against the defendant for the sum of twenty-seven dollars and twenty-five cents, to be paid out of the first money that comes to the hands of the receiver.

129 And the said William J. Averill, having filed in the office of the clerk of this court, in the county of St. Lawrence, his oath of office and his bond, as required by said decision, with two sureties, and approved by one of the justices of this court, it is further ordered, ad-

judged, and decreed, that said William J. Averill be, and he is hereby, constituted the receiver of, all and singular, the stock, property, things in action, franchises, and effects of the said corporation, The Northern Railroad Company, so as aforesaid now dissolved, with all the powers, duties, rights, and privileges, of receivers appointed upon the voluntary dissolution of corporations.

M. RICH, *Clerk.*

This sum of judgment is directed and approved by the court.

A. B. JAMES,
Justice Supreme Court.

Roll filed July 1; docketed May 24, 1866.

ST. LAWRENCE COUNTY, *Clerk's Office, ss:*

I certify that I have compared the foregoing with the original judgment-roll on file in this office, and the same is a true copy of the whole of such original.

Witness my hand and seal at Canton, this 28th day of June, 1866.

[SEAL.] JNO. MILLER,
Deputy Commissioner.

130 Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN J. Lovering, and others.

To SMITH M. WEED, Esq.,
Attorney for Defendant:

Please take notice that, at the special term of this court, appointed to be held at the chambers of Mr. Justice James, in Ogdensburgh, on the 21st day of April, 1868, at the opening of the court on that day, or as soon thereafter as counsel can heard, I shall, upon the pleadings and proceedings in this action, and the records referred to in the complaint and answer, move the court for judgment as prayed for in the complaint, or for such further or such other order as to the court may seem proper.

Dated April 8th, 1868.

Yours, &c.,

M. B. CHAMPLAIN,
Att'y General.

131 State of New York, supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY AND OTHERS.

CITY AND COUNTY OF NEW YORK, *ss:*

Christopher C. Langdell, being duly sworn, deposes and says: That he is of counsel for the defendants in this action, and attorney and counsel for the plaintiffs, in the other action hereafter referred to; that deponent is informed, and believes that this action was commenced in

the early part of June, 1867; that although the same is prosecuted in the name of The People of the State of New York, the same was commenced and is prosecuted at the instigation and for the sole benefit of the Ogdensburgh and Lake Champlain Railroad Company, and said people have no interest whatever therein; that although the same is prosecuted in the name of the attorney general of the State of New York, as attorney of record, it is in fact wholly prosecuted by the attorney and counsel of said railroad company, who signs the name of said attorney general, at his own will and pleasure, said attorney general having in fact nothing to do with said suit; that deponent has been informed at the attorney general's office that said suit was authorized to be commenced on the application of Hon. W'm C. Brown, as attorney and counsel for said railroad company; that the said Brown having furnished the security required by the last clause of § 430 of the code procedure, the attorney general was of opinion that he was bound
132 by said section to authorize the commencement of said suit, and he accordingly gave to said Brown a power of attorney to commence and prosecute said suit in his name, and does not consider himself authorized to interfere with said suit in any manner.

Deponent is further informed and believes, that said Brown applied to the court for, and obtained, leave to commence said suit, without any notice whatever to the defendants, or any of them, and caused several of said defendants to be arrested at the time of the service of the summons on them.

Deponent further saith that, in the month of March, 1867, the Northern Railroad Company, one of the defendants herein, commenced a suit in the supreme court in the city and county of New York, against the said Ogdensburgh and Lake Champlain Railroad Company, and others; that said last-named company appeared in said suit by the said W'm C. Brown, and answered the complaint therein, and in said answer set up the same matters that are contained in the complaint herein; and further set up as a defence to said action that said Northern Railroad Company was not an existing corporation, but long before the commencement of said action became dissolved, and surrendered its franchise of being a corporation, and that such surrender had been accepted by the government of this State; and that said Northern Railroad Company had been dissolved by a judgment rendered in this court, in a suit brought against said company for that purpose by one Calvin W. Gibbs, as a stockholder in said company; that said suit is still pending and undetermined.

C. C. LANGDELL.

Sworn to before me this May 9, 1868.

MELVIN BROWN,
Notary Public, N. Y. City and Co.

133 Supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK }
ag'st
THE NORTHERN RAILROAD COMPANY. }

Hon. M. B. CHAMPLAIN,
Attorney General of the State of New York,
Attorney for the Plaintiffs herein:

You will please to take notice that, at the special term of this court,

appointed to be held at the chambers of Mr. Justice James, in Ogdensburgh, on the 19th day of May, 1868, at the opening of the court on that day, or as soon hereafter as counsel can be heard, I shall move the court upon the affidavit hereto annexed, and upon the pleadings and proceedings in this action for an order staying all further proceedings in this action until after the trial or final determination of the action referred to in said affidavit, in which the Northern Railroad Company and others are plaintiffs, and the Ogdensburgh and Lake Champlain Railroad Company and others are defendants, and for such other and further order as may be just.

Dated New York, May 9, 1868.

Yours, &c.,

SMITH M. WEED,
Def't's Att'y.

134 At an adjourned special term of the supreme court held at the chambers of Mr. Justice James, in the city of Ogdensburgh, on the nineteenth day of May, 1868:

Present, Hon. Amaziah B. James, justice.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, FREDerick Clapp, and others.

On the motion of the defendants to stay proceedings in this action until the determination of the action of the Northern Railroad Company, and another against the Ogdensburgh and Lake Champlain Railroad Company and others, and on reading the affidavit of C. C. Langdell, esq., and the pleadings in said actions, and after hearing Mr. S. Foote, of counsel for defendants, in support of the motion, and Mr. W'm C. Brown, of counsel for The People of the State, it is ordered that said motion be, and the same hereby is, denied, with ten dollars costs.

A. B. JAMES,
Just. Sup. C't.

135 At a special term of the supreme court, held at the city hall in the city of New York, on the 9th day of July, 1868:

Present, Hon. Josiah Sutherland, justice.

THE PEOPLE OF THE STATE OF NEW YORK
ag'st
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, A. W. Chamberlain, Frederick Clapp, and others.

On reading and filing the consent of Smith M. Weed, esq., hereto annexed, it is ordered that Stanley, Langdell & Brown be, and they hereby are, substituted in the place of Smith M. Weed as attorneys for the defendants above named.

A copy.

CHA'S E. LOEW, *Clerk.*

Supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, et al.

You will please to take notice that the defendants, The North-
136 ern Railroad Company, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, above named, appeal to the general term of this court from the order made and entered herein at special term on May 19, 1868, denying the defendants' motion to stay proceedings in this action until the determination of the action of The Northern Railroad Company and another against The Ogdensburgh and Lake Champlain Railroad Company and others, and from each and every part thereof.

Dated New York, July 20, 1868.

STANLEY, LANGDELL & BROWN,
Att'ys for Def'ts above named, 16 Wall Street, N. Y.

To MARSHALL B. CHAMPLAIN, Esq.,
Att'y General for Pl'ffs, and
JOHN MILLER, Esq.,
Clerk of St. Lawrence County.

Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK
vs.
THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain. } Judgment.

This cause having come on to be heard at a special term of this court, held at the chambers of Hon. A. B. James, on the 19th day of May, 1868, upon the motion of the attorney general for judgment upon the complaint and answer of the above-named defendants, and after hearing Mr. W. C. Brown, of counsel for the plaintiffs, and Mr. Still-
137 man Foote, of counsel for the defendants, and all the premises having been duly considered by the court, and a decree having been thereupon made, bearing date the 22d day of June, 1868, whereby it was ordered, adjudged, and decreed that The Northern Railroad Company has surrendered and forfeited all the rights, privileges, and franchises granted by any act of incorporation, or acquired under the laws of this State, and is adjudged dissolved; and that the governor of the State accepted such surrender and resumed the said franchise by the act entitled "An act to authorize the formation of a corporation in place of the Northern Railroad Company dissolved, and to empower said corporation to execute a mortgage upon its property," passed March 31, 1857; and it was by said order further decreed that the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, are guilty of having usurped and used within the State the franchises of a corporation contrary to the laws of this State, and that a fine is imposed upon the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, of five hundred dollars, and that plaintiff have judgment against them therefor.

And it was, by said order, further adjudged and decreed that the said defendants, The Northern Railroad Company, and the individual defendants, and their and each of their attorneys, agents, servants, and assigns, do absolutely desist and refrain from occupying, using, or claiming, or pretending to use in any manner any franchise or authority as a railroad corporation within this State, under the name of The Northern Railroad Company, or under any other name, in pretense of owning or having authority or control over the railroad which extends from Ogdensburgh to Lake Champlain, and from holding or pretending to hold, within this State, any election of directors of any such company, and from doing any act or thing, within this State, as such corporation.

And it was further, by said order, adjudged and decreed that
138 the plaintiff recover of said defendants judgment for their costs in this action, and that W'm J. Averill, of Ogdensburg, be appointed receiver of the stock, property, things in action, and effects of said Northern Railroad Company, on his giving security, in the usual form, in the sum of twenty thousand dollars and filing the oath of office.

It is now, on motion of Marshall B. Champlain, attorney general of the State of New York, hereby adjudged that said order, above recited, be, and the same is, in all things confirmed, and that the defendants, The Northern Railroad Company, has surrendered and forfeited all the rights, privileges, and franchises granted by any acts of incorporation or acquired under the laws of this State, and is hereby dissolved, and that the plaintiff receive from the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlin, and C. C. Chamberlin, the sum of five hundred dollars, the amount of the fine, so as aforesaid imposed upon them by said above-recited order, together with the sum of one hundred and nineteen $\frac{40}{100}$ dollars, costs and disbursements of said action, and that the plaintiff have execution therefor; and that the defendants, the Northern Railroad Company, and the individual defendants herein, and their and each of their attorneys, agents, servants, and assigns, do absolutely desist and refrain from occupying, using, or claiming, or pretending to use in any way or manner any franchise or authority as a railroad corporation within this State under the name of The Northern Railroad Company, or under any other name in pretence of owning or having authority or control over the railroad which extends from Ogdensburgh to Lake Chaplain, or from holding or pretending to hold within this State any election of directors of any such company, and from doing any act or thing within this State as such corporation.

And it is further adjudged that William J. Averill, of Ogdensburg,
N. Y., be, and he is hereby, appointed receiver of the stock, property, things in action and effects of said Northern Railroad Company,
139 in his giving security in the sum of twenty thousand dollars, as in said order provided.

JNO. MILLER, *Clerk.*

STATE OF NEW YORK,
St. Lawrence County, Clerk's Office, ss :

I have compared the foregoing with the original judgment in the above-entitled action, the roll whereof was filed and the judgment docketed in this office on the 14th day of July, 1868, and I certify that the same is a true and correct copy of said judgment, and of the whole thereof.

In witness whereof, I have hereunto set my hand and official seal at Canton, this 15th day of July, 1868.

JNO. MILLER, *Clerk.*

GENTLEMEN: Take notice that the within is a copy of the judgment entered in this action in the clerk's office of the county of St. Lawrence, on the 14th day of July, 1868.

Yours, &c.,

M. B. CHAMPLAIN,
Att'y Gen'l for Pl'ff, Albany, N. Y.

TO STANLEY, LANGDELL & BROWN, Esq.,
Att'ys for Def'ts

140 Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE NORTHERN RAILROAD COMPANY AND OTHERS. } Opinion.

This is an action by the people brought by the attorney general of the State, on the nature of a quo warranto, to dissolve the corporation known *at* the Northern Railroad Company.

The complaint alleges the insolvency of the company for more than one year; that it has for more than one year neglected and refused to pay and discharge its debts, and that it has for more than one year suspended the ordinary and lawful business of such corporation.

The answer, after setting forth a mass of wholly irrelevant matter, denies each and every allegation and averment in the complaint, not heretofore specially admitted or denied.

The cause was moved for trial on complaint and answer at special term.

W'M C. BROWN, *for Plaintiffs.*
S. FOOTE, *for Defendants.*

JAMES, J:

The counsel for the defendant first interposed as a preliminary objection that this cause could not be brought on for hearing at special term, but should go upon the circuit calendar, and be tried by a jury. By the code, §§ 253, 254, and 255, all issues except in actions for the recovery of money only, or of specific real or personal property, or for divorce on the ground of adultery are triable by the court, and
141 may be tried at circuit or special term, (Rule 28.) As this action is not within either of the exceptions in § 253, it follows that it may be tried at special term. The motion is therefore denied.

The Revised Statutes, 2d vol. 463, § 38, enacts that "whenever any incorporated company shall have remained insolvent for one whole year, or part of one year shall have neglected or refused to pay and discharge its notes, or other evidences of debt, or for one year shall have suspended the ordinary and lawful business of such corporation, it shall be deemed to have surrendered the rights, privileges, and franchises granted by the act of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved."

The code, § 430, provides that an action may be brought by the attorney general, in the name of the people of the State, for the purpose of vacating the charter, or annulling the existence of a corporation other than municipal "whenever such corporation shall have forfeited its privileges or franchises by failure to exercise its powers, or done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises," and it is made the duty of the attorney general to apply for leave, and when granted, to bring the action.

The complainant distinctly alleges facts which bring this case within the provisions of § 38 of the R. S., above quoted.

The answer is one which would have been stricken out on motion, as sham and irrelevant. It is, in form, a violation of the express requirements of the code. Sec. 149 requires the answer to contain "a general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge thereof, sufficient to form a belief," and § 168 declares that every material allegation of the complaint not controverted by the answer as prescribed in § 149, shall for the purposes of the action be taken as true."

142 None of the material allegations of this are so controverted by the answer. The defendants do not claim that the answer contains a general or specific denial of such material allegations; they only claim that it contains a denial of each and every allegation, "not in the answer specifically admitted or denied." That is not what the code authorizes or requires. It does not authorize or require admissions; and denials are required to be general or specific, not dependent, contingent, or constructive, nor to be spelled out from irrelevant and immaterial matter. Such an answer may be convenient to enable a defendant to escape the penalty of perjury, but it is not authorized by the code, and does not amount to a denial of any material allegation of the complaint.

This answer demonstrates the wisdom of the code, in limiting the denials in answer to general or specific denials, and the necessity of strictly adhering to those requirements; it contains 161 folios; if well pleaded, the court is required to wade through these 161 folios to ascertain what is specially admitted or specially denied, in order to determine what is denied.

This answer seems to be an old complaint remodelled and varnished; its statements are often confused and incongruous, and it is sometimes difficult to determine whether a statement is intended for an admission or a denial; as when it admits a judgment against the corporation and then asserts it void.

But the code declares that every material allegation is a complaint not controverted by the answer, as prescribed by § 149 is, for the purposes of the action, to be taken as true; none of the material allegations of the complaint in this case are so controverted. It therefore follows that they stand admitted, and being so admitted, the plaintiff is entitled to the judgment demanded.

But a careful examination of the answer would show the admission of the incorporation of the Northern R. R. Co., its construction of a road from Ogdensburgh to Rouse's Point; that a certain portion of the cost of said road was paid for by capital stock subscribed

143 and paid in, and the balance was obtained on bonds secured by mortgages upon its roads, &c.; that one or more of said mortgages was sought to be foreclosed; a decree of sale obtained; a sale of the roads, &c., had, and possession taken under such sale over ten years ago; that a balance is due and unpaid on said bonds, and has been for several years; that said corporation is not in possession of said road or its franchises, and has not been for years; that its ordinary and lawful business has been suspended for over ten years; and that unless such bonds and mortgages can be repudiated in whole, or in part, it is wholly insolvent.

This covers the whole ground of the complaint; brings the case clearly within the statute above cited, and as between the people and the corporation, demands its dissolution.

The people have nothing to do with the alleged illegal and fraudulent acts of the directors and trustees of said corporation and others, as set forth in the defendants' answer. Such acts, if committed, do not constitute any defence to this action, but on the contrary, furnishes cumulative reasons why the corporation should be dissolved, and its assets put into the hands of a responsible receiver.

This is sufficient to dispose of the case, so far as the Northern R. R. Company is concerned, for if its dissolution has not been made complete by the statutes and proceedings set forth in the answer, it would be by the decree which must be entered in this action.

In respect to the liability of the individual defendants to punishment for the alleged violation of law in setting up and using a franchise within this State without lawful authority, it is necessary to enquire whether the franchise was given from the Northern R. R. Company at the time of the acts complained of.

That said company had, for more than a year, suspended the ordinary and lawful business for which the franchise was granted by the State, appears by the answer. It shows such suspension ever since 1854. This alone is sufficient to amount to a surrender. The
144 statute is peremptory in saying that upon any such default for one year, the corporation "shall be deemed to have surrendered the rights, privileges, and franchises granted by any act of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved." In the language of Judge Sutherland, in Bank of Columbia and Att'y Gen., 3 Wen. 596, "no explanation is admissable."

Did such surrender ipso facto dissolve the corporation? Or what was necessary to make the dissolution complete? These questions are tersely answered by the court of appeals in Bratt v. Benedict, 17 N. Y. Rep., 99. It says, "As a general rule, to constitute a dissolution of a corporation by a surrender of its franchise, the surrender must be accepted by the government, or a default must be judicially ascertained and declared." The complaint shows that, in this case, the surrender was accepted by the government, and also that it is judicially ascertained and declared. The answer puts in issue the validity of the judgment of dissolution, but it sets forth the statute of March 31, 1857, being the "Act to provide for the formation of a corporation in place of the Northern Railroad Company, dissolved," &c., and alleges the regular formation of a railroad corporation under it, to wit: The Ogdenburgh Railroad Company in 1858, to which corporation, by the terms of the act, the rights to the franchise became transferred, so far as the assent of the State was necessary. The answer also sets forth the amendment of April 8, 1864, to act of 1858, under which it appears that the Ogdensburgh and Lake Champlain Railroad Company became incorporated.

By each of these statutes the legislature accepted the surrender of the franchise before granted to the Northern Railroad Company, and provided for conferring it upon another corporation. The old corporation was therefore "dissolved in fact," and likewise dissolved in law as early as 1858.

145 It necessarily follows that the defendants should be adjudged guilty of usurping and using, without lawful warrent or charter, the franchise of being a corporation as charged.

Judgment must, therefore, be given declaring the Northern Railroad Company dissolved, appointing a receiver, and making the injunction against the defendants perpetual, and in favor of the plaintiffs for costs against the defendants who joined in the answer, and that defendants

be fined in a sum to be fixed on the settlement of the decree, to be collected and paid into the treasury of the State.

In most cases the usurpation of a franchise not granted is not a very serious offence, as it does not materially injure the State, or its citizens; but in this case the usurpation is of a serious character, and its necessary tendency was to unsettle and depreciate the value of the franchise subsequently granted by the State, and hindering and obstructing the corporation holding it, and carrying out the beneficent objects for which it was granted.

State of New York, supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
ag'st
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, impl'd, &c.

ST. LAWRENCE COUNTY, *ss:*

STILLMAN FOOTE, being duly sworn, deposes and says that he
146 is a counsellor-at-law, residing at Ogdensburgh, and was counsel for the above-named defendants on the hearing which was had herein before Mr. Justice James, pursuant to the notice of motion hereto annexed, dated April 8, 1868; that when said motion came on for hearing, and before the hearing thereof was entered upon, deponent made the following preliminary objections to the hearing of said motion, to wit: 1st. That an application for judgment upon the pleadings could not be brought on as a non-enumerated motion. 2d. That such an application could only be made in a case triable by the court without a jury. 3d. That this was a common law action, and the defendants were entitled to a trial by jury. 4th. That before an application for judgment could be heard the plaintiffs must show that the cause was at issue as to all the defendants, or that such of the defendants as had not answered were in default for not answering.

Deponent further saith that said justice reserved said preliminary objections, and proceeded to hear said motion upon the merits; and, after taking time to consider, he proceeded to render judgment in the plaintiffs' favor, notwithstanding said objections, and thereby overruling the same.

That the plaintiffs' counsel not having presented to said justice, for settlement and signature, any findings of fact and law, deponent presented to said justice, on the 21st day of July last, for settlement and signature, the findings of fact and law hereto annexed, having previously notified the plaintiffs' counsel that he would present the same; that thereupon counsel for plaintiffs and defendants were heard upon said findings, and said justice held the same under consideration until the 21st day of August last, when he announced to deponent that he declined to sign or settle said finding, for the reason that no findings were necessary.

STILLMAN FOOTE.

Sworn and subscribed before me this first day of October, 1868.
E. H. MERRIAM,
Notary Public.

147 State of New York, supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, Frederick Clapp, John G. Tappan, Reuben A. Richards, Thomas Lovering, George A. Plummer, A. W. Chamberlain, C. C. Chamberlain, O. D. Kimball, John A. Andrew, George H. Plummer, George S. Reed, and William H. Gregerson; also, John Doe, Richard Roe, and James Jackson, whose names otherwise are unknown, but who pretend to exercise a franchise in this State, under its laws as a corporation, by the name of the Northern Railroad Company, (of N. Y.)

Proposed findings of fact and law, referred to in foregoing affidavit of S. Foote, esq.

This cause having come on to be heard at a special term of this court, held before Mr. Justice James at his chambers in the city of Ogdensburgh, on the 19th day of May, 1868, upon the plaintiffs' motion for judgment upon the complaint and the answer of the defendants, The Northern Railroad Company, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, and the counsel for the respective parties having been heard and due deliberation had, the said justice hereby renders his decision in writing, and specifies the facts found by him and his conclusions of law separately as follows:

148 FINDINGS OF FACT.

First. That the defendant, The Northern Railroad Company, was heretofore a corporation duly created under and by virtue of an act of the legislature of the State of New York, entitled "An act to provide for the construction of a railroad from the navigable waters of the great western lakes to Lake Champlain," passed May 14, 1845, a copy of which is annexed to the answer.

Second. That said corporation become insolvent in the month of October, 1854, and thereupon surrendered possession of all its property, real and personal, to the trustees of the second mortgage bondholders referred to in the complaint; that ever since said October said corporation has remained insolvent, and neglected to pay its notes and other evidences of debt, and entirely suspended the ordinary and lawful business of such corporation.

Third. That, on the 31st day of March, 1857, the legislature of the State of New York passed an act entitled "An act to authorise the formation of a railroad corporation in the place of the Northern Railroad Company, dissolved, and to empower said corporation to execute a mortgage upon its property;" which act is set forth in the answer.

Fourth. That, since the 7th day of March, 1866, the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, have held and exercised the franchise of being a corporation within this State.

CONCLUSIONS OF LAW.

First. That the plaintiffs were entitled to bring the cause to a hear-

ing as a non-enumerated motion, and without placing the same upon the calendar.

149 Second. That said cause was by law triable by the court at special term, and the defendants were not entitled to a trial by jury.

Third. That the plaintiffs were entitled to bring said cause to a hearing upon the complaint and upon the answer of the defendants before named, without shewing that the cause was at issue as to the other defendants, or that they were in default for no answering, or that they had appeared in the action, or that the summons had been served upon them.

Fourth. That the said Northern Railroad Company, prior to the passage of said act of March 31, 1857, had surrendered to the people of this State its franchise of being a corporation, and by said act the people accepted said surrender. And said corporation should be adjudged to be dissolved.

Fifth. That the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, since the 7th day of March, 1866, have been guilty of usurping and unlawfully holding and exercising the franchise of being a corporation within this State; and a fine should be imposed upon them to the amount of five hvndred dollars, and the plaintiffs should have judgment therefor.

Sixth. That the said Northern Railroad Company, and said individual defendants, and their and each of their attorneys, agents, servants, and assigns should be adjudged absolutely to desist and refrain from usurping, using, or claiming, or pretending to use in any manner any franchise or authority as a railroad corporation within this State under the name of the Northern Railroad Company, or any other name in pretence of owning or having authority or control over the railroad which runs from Ogdensburgh to Lake Champlain, from holding

150 or pretending to hold within this State any election of directors of any such company, and from doing any act or thing within this State as such corporation.

Seventh. That the plaintiffs should recover of said defendants their costs in this action, and that William J. Averill, of Ogdensburgh, should be appointed receiver of the stock, property, things in action, and effects of said Northern Railroad Company on giving security in the usual form in the sum of twenty thousand dollars and filing the oath of office.

STATE OF NEW YORK SUPREME COURT,
St. Lawrence County:

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, FREDERICK CLAPP, A. W. CHAMBERLAIN, and C. C. CHAMBERLAIN, impleaded, &c.
} Exceptions.

Take notice that the defendants, the Northern Railroad Company, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, except to the decision herein of Mr. Justice James, that the plaintiffs were entitled to bring this cause to a hearing as a non-enumerated motion, and without placing the same upon the calendar.

That said defendants also except to the decision of said justice that

said cause was triable by the court at special term, and that said defendants were not entitled to a trial by jury.

That said defendants also except to the decision of said justice
151 that the plaintiffs were entitled to bring said cause to a hearing upon the complaint and upon the answers of said defendants without showing that the cause was at issue as to the other defendants, or that they were in default for not answering, or that they had appeared in the action, or that the summons had been served on them.

That said defendants also except to the decision of said justice that, prior to the passage of the act of the legislature set forth in the answer, passed March 31st, 1857, and entitled "An act to authorize the formation of a railroad corporation in the place of the Northern Railroad Company, dissolved, and to empower said corporation to execute a mortgage on its property," said Northern Railroad Company had surrendered to the people of this State its franchise of being a corporation; that by said act the people accepted said surrender, and that said corporation should be adjudged to be dissolved.

That said defendants except to the decision of said justice that the defendants, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, since the 7th day of March, 1866, have been guilty of usurping and unlawfully holding and exercising the franchise of being a corporation within this State; that a fine should be imposed upon them therefor to the amount of five hundred dollars, and that the plaintiffs should have judgment for the same.

That said defendants also except to the decision of said justice that said defendants and their and each of their attorneys, agents, servants, and assigns, shall be adjudged absolutely to desist and refrain from usurping, using, or claiming or pretending to use in any manner any franchise or authority as a railroad corporation within this State under the name of the Northern Railroad Company or any other name, in pretence of owning or having authority or control over the railroad which runs from Ogdensburgh to Lake Champlain; from holding or pre-
152 tending to hold within this State any election of directors of any such company, and from doing any act or thing within this State as such corporation.

That said defendants also except to the decision of said justice that the plaintiffs should recover of said defendants their costs in this action, and that William J. Averill, of Ogdensburgh, should be appointed receiver of the stock, property, things in action, and effects of said Northern Railroad Company on giving security in the usual form in the sum of twenty thousand dollars, and filing the oath of office.

Dated September 28th, 1868.

STANLEY, LANGDELL & BROWN,
Def'ts Att'ys.

To MARSHALL B. CHAMPLAIN, Esq.,
Attorney General, &c., and
The COUNTY CLERK *of St. Lawrence County.*

Supreme court, St. Lawrence County.

THE PEOPLE OF THE STATE OF NEW YORK
against
THE NORTHERN RAILROAD COMPANY, JOHN L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, and others.

Please to take notice that the above-named defendants, The Northern

Railroad Company, John L. Lovering, Frederick Clapp, A. W. Chamberlain, and C. C. Chamberlain, appeal to the general term of
153 this court from the judgment entered herein on the 14th day of July, 1868, in favor of the plaintiffs and against the defendants above named, and from each and every part thereof.

Dated New York, August 7th, 1868.

STANLEY, LANGDELL & BROWN,
Att'ys for Def'ts above named,
116 *Wall Street, N. Y.*

To MARSHALL B. CHAMP'AIN,
Att'y General for Plaintiffs, and
JOHN MILLER, Esq.,
Clerk of St. Lawrence County.

At a general term of the supreme court of the State of New York, held at the court-house, in the city of Schenectady, in the county of Schenectady, on the fifth day of January, in the year one thousand eight hundred and sixty-nine:

Present, Hons. A. B. James, P. J.; E. H. Rosekrans, Platt Potter, A Bockes.

THE PEOPLE, EX REL., RESP'DTS,
ag'st
THE NORTHERN RAILROAD COMPANY, APP'L'TS.

Judgment affirmed. Order appealed from affirmed with $10 costs.

STATE OF NEW YORK,
Schenectady County, Clerk's Office, ss:

I certify the above to be a true copy of the decision made in the above-entitled cause on file in this office.

154 Witness my hand and seal of said court this 12th day of January, 1869.

[L. S.] JAMES G. CAW, *Clerk.*

Filed and entered January 9, 1869.

At an adjourned special term of the supreme court, held at the chambers of Hon. A. B. James, in the city of Ogdensburg, on the 2nd day of February, 1869:

Present, Hon. A. B. James, justice.

THE PEOPLE OF THE STATE OF NEW YORK,
respondents,
ag'st
THE NORTHERN RAILROAD COMPANY, FREDerick Clapp, and others, appellants.

On reading and filing the affidavit of W'm C. Brown, sworn to on the 16th day of January, 1869, and the other pleadings and proceedings in this action, and due proof being made of the service of said affidavit, and the notice of this motion upon the attorneys for the above-named appellants, and after hearing Mr. L. Hasbrouck, jr., of counsel for the motion, it is ordered that the judgment of affirmance of the judgment heretofore entered in this action, and for costs of the appeal to the gene-

ral term, be entered and perfected upon the order of the general term herein, as of the 10th day of October, 1868, with ten dollars costs of this motion.

A. B. JAMES,
Justice Supreme Court.

Entered Feb'y 6th, 1869.

155 Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK *vs.* THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, FREDERICK CLAPP, A. W. CHAMBERLAIN, and C. C. CHAMBERLAIN. } Judgment, October 6th, 1868.

This cause having come before the general term on an appeal from a judgment entered in St. Lawrence County clerk's office, on the 14th day of July, 1868, against the defendants, and the said appeal having been heard and considered in this court, and decision thereon having been rendered, whereby the aforesaid judgment, and also the order appealed from in this action is affirmed: It, is on motion of Marshall B. Champlain, attorney general, &c., adjudged that said judgment be, and the same is in all things hereby, affirmed, and that the plaintiffs recover of the defendants above named the costs and disbursements on said appeal, amounting to one hundred and sixteen $\frac{67}{100}$ dollars.

JNO. MILLER,
Clerk St. Lawrence Co.

Roll filed and judgment docketed October 6th, 1868, at 10 a. m.

156 N. Y. supreme court.

THE PEOPLE OF THE STATE OF NEW YORK *ag'st* THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, FREDERICK CLAPP, A. W. CHAMBERLAIN, et al.

SIR: You will please to take notice that the defendants appeal to the court of appeals from the judgment entered in this action in the office of the clerk of St. Lawrence County, as of the 6th day of October, 1868, upon the order of the general term of this court, made on the 5th day of January, 1869, affirming the judgment theretofore rendered in this action, and for $116 67 costs of appeal, and from each and every part of said judgment.

Dated New York, September 30, 1869.

STANLEY, LANGDELL & BROWN,
Att'ys for Def'ts, 16 *Wall St., N. Y.*

To M. B. CHAMPLAIN,
Att'y Gen., for Pl'ff, and
COUNTY CLERK *of St. Lawrence County.*

Filed Oct. 8th, 1869.

STATE OF NEW YORK,
St. Lawrence County Clerk's Office, ss:

I, John Miller, clerk of the county of St. Lawrence, do hereby certify that the foregoing is a copy of a judgment-roll filed, and the
157 judgment therein docketed in my office. Also a notice of appeal from said judgment to the court of appeals; that I have compared said copy with their respective originals on file and of record in my office, and the same are in all respects true and correct copies of the whole thereof.

In witness whereof I have hereunto set my hand and seal of office at Canton, this 15th day of October, 1869.

[L. S.]

JNO. MILLER,
St. Lawrence Co. Clerk.

In the supreme court of the State of New York.

THE PEOPLE
ag'st
THE NORTHERN RAILROAD COMPANY and others.

Opinion of the court at general term.

BOCKES, J.:

The motion for a stay of proceedings was addressed to the discretion of the court at special term, if not exclusively, certainly to a very great extent. In so far as it was addressed to the discretion of the court, its decision cannot be overhauled on appeal. But the denial of the motion was manifestly right in every possible aspect of the case. In the first place, the parties to the two actions were not the same, nor does it appear that the entire relief demanded and sought for in this action could be awarded in the other.

Again, if it is true (and the court so found and adjudged on an examination of the pleadings) that the material allegations of the
158 complaint were not denied by the answer—that is, that it stood admitted of record that the Northern Railroad Company had forfeited and surrendered its charter and franchise—there was certainly no reason for staying the proceedings in the action, the effect of which would be to prevent the judgment which the law *delared* should be awarded on a given, admitted, or established state of facts. In such case, to permit the company to continue the use of its corporate rights, by an order staying judgment, would be an *arbitary* exercise of judicial authority and favoritism most unbecoming in the court.

We are thus brought to consider the case on the motion for judgment against the defendants on the pleadings.

The complaint charges clearly and unequivocally both a forfeiture and surrender of the corporate rights and franchises of the corporation known as the Northern Railroad Company; also, a usurpation of right and authority by the individuals named in the judgment, in violation of the statute. It is alleged in terms that the corporation was insolvent in October, 1854; that it then surrendered its property to its creditors; that it has remained insolvent ever since; has ever since neglected to pay its notes and other evidences of debt, and entirely suspended its ordinary and lawful business; and further, that another corporation, with the same general object, had, under the authority of the State,

organized and was in actual operation in its place and stead. Are these averments of fact denied? Indeed, is either charge denied? Unless denied by a general or specific denial in the answer of the defendants, they stand uncontroverted, and for the purpose of the action are to be taken as true. (Code, sections 149, 162.)

The answer is stuffed with irrelevant and redundant matter. But in the detaching thereof, the insolvency of the corporation, its sur-
159 render of its property to its creditors, its neglect to pay and satisfy its evidence of debt, its suspension of its ordinary and lawful business, and the organization of another company in its stead, under legislative authority, are in substance and effect stated and admitted.

There is no attempt at a specific denial of any allegation of the complaint; and the denial which follows a prolix and confused narrative in regard to the business affairs of the company, of each and every allegation and averment of the complaint not before specifically admitted, raises no issue in fact in the case when construed with reference to the prior statements and admissions contained in the answer. It is entirely plain that the defendants did not intend to deny the principal facts charged.

It is manifest from their own statement of facts, that they could not truthfully do so. The whole tenor of the answer is to the effect that the corporation had long since become insolvent and suspended its ordinary and lawful business. According to their own statement of the case, they could not deny these facts, and all they attempt by the pleading is to excuse the alleged forfeiture. The law however, admits of no excuse, nor is any explanation available in such case. Without attempting an analysis of the answer, it is sufficient to express our concurrence with the learned judge in his opinion at special term, that a clear forfeiture of the franchise of this corporation stands admitted of record in this case; and specifically do we adopt his conclusion, on the grounds fully stated by him, that the company had for more than a year suspended its ordinary and lawful business. This fact stands admitted by the pleadings beyond peradventure. The judgment of forfeiture awarded at special term, is well supported by the admitted facts of the case.

If the views and conclusions above stated are well grounded,
160 there was no issue in the case to be settled or determined by evidence, as it was the right of the party to apply to the court on the first opportunity for such judgment as the admitted facts authorized. No trial was necessary beyond an application of the law to the facts. The motion for judgment on the pleadings was therefore right, and was properly made at special term.

No point is made by the appellants that the fine imposed by the court was unauthorized or excessive in amount. (Code, sec. 441.) This branch of the case, therefore, requires no comment. The authority to appoint a receiver, I think, exists under section 444, of the code.

At first view, the right seemed doubtful, but on reflection and examination of the several provisions of law bearing on the subject, I am persuaded that the appointment of a receiver in the judgment of forfeiture is well sustained.

The right to bring an action by the attorney general for the purpose of vacating or annulling the existence of a corporation, is given by section 430 of the code. Section 442 provides that in case of forfeiture judgment shall be rendered excluding the corporation from its corporate rights, privileges, and franchises, and that it be dissolved; and section 444 declares that when such judgment shall be rendered the court shall have

power to restrain the corporation and appoint a receiver of its property; and by the last clause it is made the duty of the attorney general, immediately after the rendition of such judgment, to institute proceedings for that purpose.

The last clause was intended to cover the case when no receiver was appointed in the judgment declaring the forfeiture; but does not
161 create or suggest an objection to the practice of rendering complete and perfect relief in and by the judgment itself. The restraining power is undoubtedly incident to the right to adjudge dissolution; and the appointment of a receiver is absolutely necessary for the purpose of finally closing the affairs of the defunct corporation. Such appointment should therefore form part of the judgment, as in this case, or should immediately follow it. After due appointment, the receiver will be controlled in his action by article three, title four, chapter eight, of the third part of the Revised Statutes.

The order and judgment appealed from should be affirmed with costs.

162 State of New York, supreme court, clerk's office, St. Lawrence County, ss:

The answer of the judges of the supreme court of the State of New York in and for the fourth judicial district to the within writ, appears by the papers hereunto annexed, containing a copy of the judgment-roll and proceedings, whereof mention is made in said writ, with all things concerning the same, which we certify under the seal of our said supreme court, as by said writ we are commanded.

163 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the supreme court of the State of New York for the fourth judicial district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court of the State of New York and the court of appeals of the State of New York, before you, or some of you, between The People of the State of New York, plaintiffs, and the Northern Railroad Company, John L. Lovering, Frederick Clapp, John G. Tappan, Reuben A. D. Richards, Thomas Lovering, George A. Plumer, A. W. Chamberlain, and C. C. Chamberlain, O. S. Kimball, John A. Andrew, George H. Plumer, George S. Reed, & William H. Gregerson; also John Doe, Richard Roe, and James Jackson, whose names otherwise are unknown, but who pretend to exercise a franchise in this State, under its laws, as a corporation, by the name of the Northern Railroad Company of New York, defendants, the record whereof has been remitted to said supreme court from said court of appeals, a manifest error hath happened, to the great damage of the said defendants, as is said, and as appears by the complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the capital in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said

justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of June, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

164 (Indorsed:) U. S. Supreme Court. The People, &c., def'ts in error, ag'st The Northern Railroad Company et al., pl'ff in error. Writ of error.

The within writ is hereby allowed.
June 5th, 1870.
(S'd) S. NELSON.

STANLEY, LANGDELL & BROWN,
Att'ys for Def'ts, 16 Wall St., N. Y. City.

Filed June 20th, 1870.

165 UNITED STATES OF AMERICA:

[SEAL.] To the people of the State of New York, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the clerk of the supreme court of the State of New York, at Canton, in the county of St. Lawrence, wherein the Northern Railroad Company, John L. Lovering, Frederick Clapp, A. W. Chamberlain, & C. C. Chamberlain are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Samuel Nelson, justice of the Supreme Court of the United States, at Washington, this 5th day of June, one thousand eight hundred and seventy.

S. NELSON.

166 (Indorsed:) U. S. Supreme Court. The Northern Railroad Company, et al., pl'ff in error, vs. The People, &c., of the State of New York. Citation. Stanley, Langdell & Brown, att'ys for pl'ffs in in error, 16 Wall st., N. Y. City.

Service of a copy of the within is hereby admitted.
Albany, June 16th, 1870.

MARSHAL B. CHAMPLAIN,
Att'y Gen'l, for Plaintiff.

Filed June 21st, 1870.

167 STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capital, in the city of Albany, on the first day of April, in the year of our Lord one thousand eight hundred and seventy before the judges of said court.

Witness the Hon. Robert Earl, chief judge presiding; E. O. Perrin, clerk.

THE PEOPLE OF THE STATE OF NEW YORK, respondents, *against* THE NORTHERN RAILROAD COMPANY AND others, appellants. } Remittitur, April 13th, 1870.

Be it remembered that, on the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-nine, The Northern Railroad Company, and others, the appellants in this action, came here into the court of appeals, by Stanley, Langdell & Brown,
168 their attorneys, and filed in the said court a notice of appeal and return thereto, from the supreme court of the fourth judicial district of the State of New York. And the people of the State of New York, the respondents in said action, afterwards appeared in said court of appeals, by M. B. Champlain, their attorney; which said notice of appeal, and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after having heard this action argued by Mr. John K. Porter, of counsel for the appellants, and by Mr. W'm M. Evarts of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed.

And it was further ordered and adjudged that the respondents recover against the appellants their costs of appeal to this court.

169 And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect, and hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

[L. S.] E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

170 COURT OF APPEALS, CLERK'S OFFICE,
Albany, April 13th, 1870.

I hereby certify that *that* the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

E. O. PERRIN, *Clerk.*

171 Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK, respondents, *vs.* THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING, FREDERICK CLAPP, A. W. CHAMBERLAIN, & C. C. CHAMBERLAIN, appellants. } Judgment, April 28th, 1870.

This cause having come before the court of appeals on appeal from a judgment of this court entered in St. Lawrence County clerk's office, on an order of the general term made on the 15th day of January, 1869, and said appeal having been heard and duly considered in said court of appeals and decision thereon rendered, whereby the aforesaid judgment of the supreme court is in all things affirmed, and the record and proceedings in said court of appeals remitted to the said supreme court there to be proceeded upon according to law:

172 It is therefore, on motion of M. B. Champlain, attorney general of the State of New York, for The People, plaintiffs herein, adjudged that the said judgment be, and the same hereby is, in all things affirmed, and that the plaintiffs recover of the defendants their costs and disbursements on said appeal amounting to $154 55.

JNO. MILLER, *Clerk.*

Roll filed and judgment docketed, April 28th, 1870, at 10 o'clock a. m.

173 And I further certify that I have compared the foregoing copies with their respective originals remaining of record and on file in my office, and the same are true & correct transcripts therefrom and of the whole thereof.

In witness whereof, I have hereunto set my hand and seal of our said supreme court, at Canton, this 8th day of October, A. D. 1870.

[SEAL.] JNO. MILLER, *Clerk.*

(Indorsement on cover:) No. 367. The Northern Railroad Company, John L. Lovering et al., pl'ffs in error, vs. The People of the State of New York. New York sup. court. Filed 9th December, 1870.

Supreme Court of the United States.

No. 367.—December Term, 1870.

THE NORTHERN RAILROAD COMPANY & AL.

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

Supplemental Brief for Plaintiff on Defendant's Motion to Dis

Since the preparation of this brief
vs. Kahn has appeared, (11 Wallace
is asked to that case, the first in which the
sidered the effect of the act of February 5th, 1867, (14 Statutes at Large, 385,) as affecting the practice of this court on writs of error to state courts.

In the case of Stewart vs. Kahn the question of constitutional law, arising out of the act of Congress of June 11th, 1864, did not appear to have been expressly raised by the pleadings in the state court. This question of constitutional law was first mentioned in the pleadings in the petition for rehearing presented by the plaintiffs to the supreme court of the state.

In this petition the plaintiffs say, "They mainly relied upon the act of Congress entitled 'An act in relation to the limitation of actions in certain cases,' approved June

11th, 1864, as a complete answer to the plea of prescription set up by the defendants."

In delivering the judgment of this court Mr. Justice Swayne said: "The case would have been more satisfactorily presented if a bill of exceptions had been taken at the proper time, and the material facts in that way placed upon the record." Yet though the plaintiffs had failed to raise the question of constitutional law upon which they relied, yet this court held that it sufficiently appeared in the case.

The decision in Stewart vs. Kahn shows that this court is disposed to interpret its jurisdiction in this class of cases in harmony with the liberal provisions of the act of Congress of February 5th, 1867.

The case now under consideration is favorably distinguished from the above-mentioned case of Stewart vs. Kahn by the fact that the question of constitutional law involved in the case was expressly set forth in the pleadings.—(See extract from defendants' answer on 2d page of the brief on this motion) In said pleadings the present plaintiffs in error insist that "the legislature had no right or power to authorize the said mortgage bond-holders to form a corporation for and to take the property and effects of this defendant, the Northern Railroad Company, or of said other defendants, the stock-holders of said company, without due process of law."

There a constitutional question was expressly raised in the pleadings. This question the plaintiffs in error have a right to have determined by the court here on its merits, which can only be done on a full hearing of the case.

We submit, then, that the motion to dismiss the writ of error in this case should not prevail.

C. CUSHING,
Of Counsel for Plaintiffs in Error.

Supreme Court of the United States.

DECEMBER TERM 1870.

THE NORTHERN RAILROAD COMPANY,
JOHN L. LOVERING *et al.*
Plaintiffs in Error,

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

No 367.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF OF DEFENDANTS IN ERROR ON MOTION TO DISMISS FOR WANT OF JURISDICTION.

FIRST. There is a conspicuous absence from this record of any question which can give this court jurisdiction to decide the case, under the 25th section of the judiciary act of 1789, or the 2d section of the act of February 5, 1867.

There was "drawn in question," in the court below, neither the constitutionality nor construction of any statute of the United States; nor the validity of any statute of the State of New York, on the ground of its being repugnant to the Constitution or laws of the United States; nor, indeed, any other matter or question cognizable here on writ of error to a State court.

And particularly do we deny that the validity of the New York act of March 31, 1857, referred to in brief of counsel for plaintiffs in error, on the ground of its being repugnant to the provision of the National Constitution, which forbids a State passing any "law impairing the obligation of

contracts," or to any other provision of that Constitution, was "drawn in question," and that there was any decision of the State court in favor of the validity of that act.

The slightest examination of the record will show, not only that the decision of the question of the constitutionality of the New York act of 1857 was in no degree necessary to the determination of the case, but also that this question was not actually decided or considered by the court below.

The only questions decided below were questions of local practice and the effect of State laws, wholly free from any consideration of constitutional doctrine or construction.

The suggestion that the State court passed upon the constitutional validity of the act of 1857, to which reference is made, and sustained the act, as not repugnant to the provision of the constitution mentioned in the brief of counsel, is purely an afterthought of the plaintiffs' in error, conceived in the interest of intended delay of the final consummation of the case.

It is only necessary to glance at the report of the case in the Court of Appeals, (42 New York Reports, 217,) to discover that the court did not *dream* that it was passing upon any question of constitutional law. A simple question of pleading and practice, under the New York code of procedure, was really the only one involved in the case in either of the State courts.

SECOND. We will verify this statement by a brief analysis of the record.

(*a*) By a provision of the Revised Statutes of New York it is declared, that "whenever any incorporated company shall have remained *insolvent* for one whole year, or for one year shall have refused or neglected to redeem its notes or other evidences of debt, or shall for one year have *suspended* the ordinary business of such incorporation, such company shall be deemed and adjudged to have *surrendered* the rights, privileges, and franchises granted by any act of incorporation, and shall be adjudged to be *dissolved*."

2 Rev. Stats., (Banks & Bros. ed.,) 600.

The New York code of procedure, (tit. XIII, chap. 11, sec. 430,) authorizes the Attorney General, in the name of the people, to bring an action for the purpose of vacating the charter of a corporation, (1) whenever it shall have forfeited its franchises by *non-user;* (2) whenever it shall have done or omitted any act amounting to a *surrender* of such franchises.

If, in any such action, it shall be adjudged that a corporation has, by neglect, abuse, or surrender, forfeited its franchises, judgment shall be rendered that it be excluded from such corporate franchises, and that it be dissolved. (Ib., sec. 442.)

If a defendant, a natural person or corporation, shall be adjudged guilty of usurping any franchises, the court may adjudge that such defendant be excluded therefrom, and, in its discretion, fine such defendant. (Ib., sec. 441.)

And upon such judgment the court may restrain the corporation, and appoint a receiver. (Ib., sec. 444.)

Voorhees' Code, 9th Rev. ed., 1867, p. 803, 7, 8.

(*b*) The object of this action against the Northern Railroad Company and the private defendants, by the Attorney General, was to obtain on behalf of the State a final and peremptory decree, declaring the dissolution of that corporation on account of a long antecedent forfeiture and surrender of its charter, by operation of the provision of the revised statutes above cited, and punishing the other defendants for usurping franchises long before given up to the State.

Without attempting to analyze the *complaint* and *answer*, a task which has been performed in the two printed opinions of the Supreme Court found in the record, (Rec., pp. 77, 86,) and in the opinion of Lott, J., in the court of appeals, (42 N. Y. Reports, 227,) it is sufficient to say, that *both* the complaint and answer show that, as early as 1854, the Northern Railroad Company became insolvent, and suspended its ordinary and lawful business; that in October, 1854, it surrendered all its property to the trustees for

its second mortgage bondholders; that the road was operated by these trustees till August, 1865; that in 1856 the second mortgage was foreclosed and, under the decree of foreclosure, the property was sold to the trustees in the second mortgage, subject to the first mortgage; that on March 31, 1857, the legislature passed an act *recognizing this previous dissolution of the Northern Railroad Company*, as mentioned, and authorizing the second mortgage bondholders, who were in possession of the property by their trustees, under the deed of surrender executed October, 1854, and under the sale in the foreclosure suit made in 1856, to form a new corporation; that, in August, 1865, the trustees of the second mortgage bondholders conveyed the property, under order of court, to the Ogdensburg and Lake Champlain Railroad Company, organized in pursuance of the act of 1857, and the act amendatory thereof of 1864; and that in May, 1866, the supreme court, at the instance of certain private creditors, had passed a decree, declaring that the company had surrendered its charter, and had been dissolved. (Rec., p. 71.)

This proceeding was, therefore, an inquest over the body of a dead corporation.

It had died by its own act as early as 1854. Its death by insolvency, *non-user* and surrender of its charter, had been accepted as a *fact* by the legislature of the State in 1857. Its business had been done by the trustees, under the second mortgage, from 1854 to 1865, and from 1865 to the time of this suit by another company. And it had been judicially pronounced to be a dead corporation, and dissolved as such in 1866.

(*c.*) After the answer (a document of 69 printed pages) had been filed, the Attorney General moved the court for judgment *on the complaint and answer* at special term. (Rec., p. 72.)

The defendants resisted the motion, on the ground that there were issues of fact to be tried by a jury. (Rec., p. 77.)

The court, however, decided that all the material facts

averred in the complaint were admitted by the answer; and that, as there were no issues of fact to be determined by the court or jury, judgment, as matter of local practice, could properly be rendered on the complaint and answer.

The *judgment* was, "that the Northern Railroad Company has surrendered and forfeited the franchises granted by any acts of incorporation, and is hereby dissolved," etc. (Rec., p. 76.)

The court adjudged that *prior* to 1857 the company had, on the admitted facts, done and omitted acts amounting in law to a surrender and forfeiture of its franchises to the State, and that by the act of March 31, 1857, the State had *accepted* this previous surrender of its charter. (Rec., p. 75, 83.)

No question touching the constitutionality of the act of 1857 was, therefore, decided by the court at special term.

Nothing whatever was determined about that act, except incidentally, that it was in effect an acceptance by the people of a previous surrender of its charter, by the company, in virtue and by operation of the general law of the State.

This appears:

1. By the terms of the judgment. (Rec., p. 75.)

2. By the opinion of Judge James, at special term, erroneously spoken of as the judgment of the court in brief of plaintiffs in error.

3. By the exceptions to the judgment on appeal to the general term, which state the whole matter of exception, so far as that act is concerned, thus: to the decision of the court at special term, that *prior* to the passage of the act of 1857, the company had surrendered its franchises to the State, and that by that act the State accepted said surrender. (Rec., p. 83.)

Not a word here of any constitutional question.

Judge James, in deciding the case at special term, treated the act of March 31, 1857, as a legislative acceptance of the previous surrender of the charter, worked by the insolvency and suspension of the company's business as early

as 1854; and held, that as the surrender had thus, by acceptance of the State, become complete, in fact as well as in law, the individual defendants were liable to punishment for exercising a corporate franchise, as alleged in the complaint.

The opinion shows that no constitutional question arose in relation to the act of 1857. (See the reasoning on page 79 of Record.)

The decision of the court in *general term*, on appeal, in affirming the judgment of forfeiture entered at the special term, was not founded or predicated, to any extent whatever, on the effect of the act of 1857.

The opinion of Bockes, J., shows conclusively that the judgment of the special term was affirmed wholly independently of any question whatever in regard to that act. It does not even mention the act. (Rec., pp. 86, 87.)

The opinion of the Court of Appeals, in affirming the judgment of dissolution and forfeiture, shows also that that court decided or passed upon no question whatever, either of constitutionality or construction, arising under the act of 1857.

The People *v.* Northern R. R Co., 42 N. Y., 227.

It simply held that the court, at special term, had a right to render judgment on the complaint and answer, as there were no issues of fact to be tried; that the admitted facts showed that the company had forfeited its charter; that no sufficient excuse therefor was alleged in the answer; and that the individual defendants, having acted with knowledge of the previous forfeiture, were liable to be fined under the New York code.

No part of this conclusion is founded upon any view, even of the construction, of the act of March 31, 1857.

(*d*) True, some vague and obscure reference is made in the answer to the act of 1857, as part of the long narrative it contains of the woes of this company.

The answer assumes that, when that act was passed, the

company was an existing corporation in law and in fact; whereas the truth is, as all the courts of New York decided, the company had worked its own dissolution, in 1854, by surrendering its business and property to the second mortgage trustees. All this evidence of dissolution is set forth in the answer itself.

The act of March 31, 1857, simply recognizes this dissolution as an existing fact; proceeds under and recites in section 1 the decree of the supreme court in 1856, foreclosing the mortgage, which expressly authorized the bondholders to form a new railroad corporation; and sanctions the formation of such corporation in *place of the Northern Railroad Company, dissolved.*

Laws of N. Y., 80th Sess., 1857, p. 454.

This act did not purport to dissolve the company; and the courts below, as we have seen, did not treat it as effecting the dissolution. The company had, by its own omissions three years before, worked a surrender of its charter.

THIRD. It thus appears, that the State court did not decide in favor of the constitutionality of the act of 1857, in this case, any more than it affirmed the constitutionality of any other statutes of the State involved in the suit. Nowhere, in the judgment or opinion of the special term, or in the opinion of the general term, or in the opinion of the court of appeals, is a constitutional question so much as hinted at.

Most certainly it does not appear that the case was necessarily decided on that question, or that the proposition of the constitutionality of the act of 1857 was essential to the judgment of forfeiture and dissolution. Indeed, the contrary affirmatively appears; for the present judgment expressly declares, that the company was dissolved wholly independently of that act—before it was passed at all.

Some irrelevant question, we think, is made in brief of plaintiffs in error in regard to the effect of the 2d section of the act of February 5, 1867, as a repeal of the last clause

of the 25th section of the act of 1789. It is contended that the clause is repealed, and that the court may now resort to other means, besides the record, to ascertain whether the prescribed questions arose in a given case.

If this were so, it would not help this case: First, because it cannot be shown, nor is it proposed to show, from any other source of information, that a constitutional question was decided by the court below; and, secondly, because the record shows *affirmatively*, and in the most conclusive manner, that no such question *was* decided.

We find, however, that the volumes of *Wallace*, from the 6th to the 11th, inclusive, contain reports of twenty-five cases decided by this court on writs of error to State courts since the act of 1867 was passed; and in one and all of them the doctrine is repeated, that the court, in this class of cases, can only consider such alleged errors as are involved in the record, and *actually* received the consideration of the State court.

We give below, for convenience of reference, all the cases on the subject decided since the act of 1867 went into effect.

Mr. Justice Nelson, in *Walker* v. *Villavaso*, (6 Wall., 128,) says:

"It must appear on the record itself to be one of the cases enumerated in that section, and nothing out of the record can be taken into consideration."

Mr. Justice Miller, in *The Victory*, (*Ib.*, 384,) says:

"Before it (this court) can entertain jurisdiction to review the judgment of a State court, the point we are called upon to revise must have been raised, and must have been decided adversely to the plaintiffs in error. It must appear that the point mentioned in the judiciary act was *actually* decided in the State court."

Mr. Justice Clifford, in *Hamilton County* v. *Massachusetts*, (Ib., 636,) says:

"It is not sufficient to show that such a question might have arisen and been applicable to the case, unless it ap-

pears in the record that it *did* arise, and was applied in disposing of the controversy."

The other cases in 6 *Wallace* are:

Mellingar *v.* Hartupee, 262.
Rector *v.* Ashley, 148.
Reichart *v.* Felps, 165.
Silver *v.* Ladd, 440.

In 7 *Wallace*, the cases are:

Twitchell *v.* Commonwealth, 324.
Austin *v.* Alderman, 698.
The Banks *v.* The Mayor, 22.

Mr. Justice Davis, in *Furman* v. *Nichol*, (8 Wall., 56,) says: "If the record shows, either by express averment, or by clear and necessary intendment, that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach, without applying it to the case in hand, then the jurisdiction of this court attaches."

In *Gibson* v. *Chouteau*, (Ib., 317,) Mr. Justice Miller says: "It is hardly a reasonable inference that the court did decide the case on the question of the statute of limitations, and certainly it does not appear that the case was necessarily decided on that question, or that the proposition was essential to the judgment."

Aldrich *v.* Ætna Co., 8 Wall., 495.

In 9 *Wallace*, the cases are:

Downham *v.* Alexandria, 659.
Worthy *v.* The Commissioners, 613.
Carpenter *v.* Williams, 486.
National Bank *v.* Commonwealth, 363.

The cases in 10 *Wallace* are:

Downham *v.* Alexandria Council, 175.
New Orleans *v.* Morgan, 260.
Messenger *v.* Mason, 509.
R. R. Co. *v.* McClure, 515.
Bethell *v.* Demaret, 540.

Mr. Justice Nelson said, in *Parmelee* v. *Lawrence*, (11 Wall., 38:) "The conflict of the State law with the Constitution of the United States, and a decision by a State court in favor of its validity, must appear on the face of the record before it can be re-examined in this court. It must be that such a question was necessarily involved in the decision, and that the State court could not have given judgment without deciding it."

In *Insurance Company* v. *The Treasurer*, (11 Wall., 208,) Mr. Justice Bradley said: "For all that appears from the record, the decision of the Court of Appeals may have been passed simply on its construction of the statute. If it were placed on this ground, and, so far as the record goes, *non constat* that it was not, that would have been a decision of the case upon a construction of the State act of 1866. Now, we have repeatedly held, that the construction of State statutes belongs to the State courts, and is not a federal question, which we can revise in a writ of error to a State court. It is true, if the State court gives such a construction to a State statute as to make it conflict with the Constitution or laws of the United States, and sustains its validity after giving it such a construction, and thereby deprives a party of his rights under the said Constitution or laws, then a federal question is raised, and we can review the decision on the point of the validity of the statute."

In *Stewart* v. *Kahn* (11 Wall., 503) the court find the question "presented by the record," and take jurisdiction of the case.

It is obvious that this court recognize, independently of express statutory requirement, the universal principle of all judicature, that a judicial tribunal cannot know any *case*, except through, and as presented by, the record. The 25th section of the original judiciary act was only declaratory of this axiom of jurisprudence.

FOURTH. We submit, therefore, that it affirmatively appears by the record that the validity of the New York act of 1857 was not considered or decided by the court below,

and that a decision of such a question was not necessary to the determination of this suit; and that, under well-settled doctrine of this court, the writ of error must be dismissed.

Wm. M. Evarts.
J. Hubley Ashton,
Of Counsel for Defendants in Error.

Supreme Court of the United States.

DECEMBER TERM, 1870.

THE NORTHERN RAILROAD COMPANY, JOHN L. LOVERING et al., plaintiffs in error,
vs.
THE PEOPLE OF THE STATE OF NEW YORK. } No. 367.

PLAINTIFFS' BRIEF ON MOTION TO DISMISS.

This case is brought here on a writ of error to the supreme court of the State of New York, the judgment complained of having been rendered in the court of appeals and remitted to the said supreme court of the State of New York.

The point involved in the judgment of the State court, which is relied on by the plaintiffs in error as giving jurisdiction to this court, is the unconstitutionality of the act of the Legislature of the State of New York of the 31st of March, 1857.

To understand the bearing of this legislative act, it is necessary to give a brief statement of the case in the State court.

The case below was of the following nature:

An information was filed May 28, 1867, in the supreme court of Lawrence county, in the State of New York, in the name of The People of the State of New York against The Northern Railroad Company, John L. Lovering et al., the present plaintiff in error, stating, among other things, that the Northern Railroad Company was a corporation under an act of the Legislature of the State of New York, passed May 14, 1845; that said railroad became very much

involved in debt; that a sale under foreclosure of a second mortgage was made of said road in 1856, and purchased by the second mortgage trustees in trust for the second mortgage bond-holders.

That the Legislature of the State of New York passed an act March 31, 1857, entitled "An act to authorize the formation of a corporation in place of the Northern Railroad Company, dissolved;" and that by an amended act, passed April 8, 1864, provision was made for the due incorporation of the second mortgage bond-holders. The information then charges that the defendants, with other persons unknown, usurp and use, without lawful warrant or charter, the franchise of being the said Northern Railroad Company.

It is then prayed that the court may decree that the said Northern Railroad Company has remained insolvent for more than one whole year; that it has for more than one year neglected to pay its notes; and that it has surrendered its franchises and is dissolved; and that it be forever excluded from all corporate rights.

The answer of the defendants contains the following passage:

"And defendants further say, that by an act of the Legislature of this State, passed on the 31st day of March, 1857, it was, among other things, provided that the holders of said 'second issues of bonds might form, and they were authorized to form, a corporation, under the act to authorize the formation of railroad corporations and to regulate the same, passed April 2, 1850, and the several acts amendatory of the same; and on formation of said corporation, any bond-holder could receive stock according to the amount of bonds held by him.

"That at the time of the passage of the above and foregoing act, the said Northern Railroad Company was a company, even in law and in fact, an existing railroad company, never having been dissolved, and were and are the owners in fact of said corporate property, and had then and now have the legal title thereto; and that the *Legislature had no right or power to authorize the said second mortgage bond-holders to form a corporation for and to take the property and effects of*

this defendant, the Northern Railroad Company, or of said other defendants, the stockholders of said company, *without due process of law*." (See transcript, p. 17.)

The constitutional question raised in this case was therefore as to the constitutionality of the said last-mentioned act of the Legislature, of the date of March 31, 1857.

This question was, as we have seen, explicitly raised. The point was distinctly presented to the State court, that the Legislature "had no right or power" to pass the said act of March 31, 1857. The legal effect of the objection thus raised to the action of the Legislature was to make the question, that said act of March 31, 1857, was in violation of the clause of the Constitution of the United States which prohibits a State from passing any "law impairing the obligation of contracts."

The legal effect of the said act of March 31, 1857, was to revoke the charter of the Northern Railroad Company, the then defendant corporation. Such revocation was clearly a violation of the contract arising out of the charter of the company.

The charter of a private corporation is a contract, the obligation of which cannot be impaired by the legislature of a State.

Dartmouth College *vs.* Woodward, 4 Wheat., 518.
Providence Bank *vs.* Billings, 4 Peters, 514.
State Bank of Ohio *vs.* Knoop, 16 How., 369.
Dodge *vs.* Woolsey, 18 How., 331.
Jefferson Branch Bank *vs.* Skelly, 1 Bl., 436.
The Binghampton Bridge, 3 Wall., 51.

Where the legislature, in an act of incorporation, reserves the right to revoke the charter, in case the corporation should abuse its privileges, an act declaring a revocation, without the establishment of such fact by competent proceedings, is unconstitutional.

Baltimore *vs.* Connelsville and S. P. R. Co., 13 Am. L. R., 750; *Ibid.*, 13 Pitts. L. J., 576.

A constitutional question, one expressly enunciated in

the 25th section of the judiciary act, was, in this case, we submit, distinctly raised in the State court.

The question thus raised was, we submit, decided as required in the said 25th section of the judiciary act, so as to give this court jurisdiction; that is to say, the said act of the Legislature of March 31, 1857, was held to be constitutional.

We do not assert that the question was decided by the State court in *ipsissimis verbis*, but we submit it was necessarily decided in order to induce the judgment rendered.

By reference to the judgment of the State court, rendered in this case, we find the following passages:

"The complaint shows that in this case the surrender was accepted by the Government. * *

"The answer puts in issue the validity of the judgment of dissolution, but *it sets forth the statute of March* 21, 1857, being the act to provide for the formation of a corporation in place of the Northern Railroad Company dissolved, &c. * * The answer also sets forth the amendment of April 8, 1864, to act of 1858, under which it appears that the Ogdensburgh and Lake Champlain Railroad Company became incorporated. *By each of these statutes the Legislature accepted the surrender of the franchise before granted to the Northern Railroad Company, and provided for conferring it upon another corporation.* The old corporation was therefore 'dissolved in fact,' and likewise dissolved in law, as early as 1858.

"It necessarily follows that the defendants should be adjudged guilty of usurping and using, without lawful warrant or charter, the franchise of being a corporation, as charged." (Transcript, p. 17.)

It will thus be seen that the act of March 31, 1857, the constitutionality of which was disputed by the defendants, was treated by the State court, in its judgment of ouster against the then defendant corporation, as a legitimate and valid law. In other words, the State court decided that the act of March 31, 1857, was constitutional.

The motion to dismiss rests on the single ground of want of jurisdiction.

To sustain the jurisdiction, it is sufficient that the constitutional question in regard to the act of March 31, 1857, was raised and decided in the State court.

It is not necessary, in opposition to the motion to dismiss, that we should show that said constitutional question was incorrectly decided. That is a question on the merits, which can only be determined on the final hearing of the cause here. At the present time it is only necessary for us to show, that a question of constitutional law was raised by the plaintiffs in error, in the State court, and decided adversely to them. Such question, one of the questions enumerated in the 25th section of the judiciary act, having been so raised and so decided, entitles the plaintiffs to invoke the jurisdiction of this court.

In this relation, we call attention to the important modification of the 25th section of the judiciary act, made by the act approved February 5, 1867. (14 Stats. at Large, p. 386, sec. 2.)

For the more ready comprehension of the change made in the 25th section of the judiciary act by the last-named statute, we annex copies of both the 25th section of the judiciary act and the 2d section of the act of February 5, 1867, in parallel columns, as follows:

SEC. 2. *And be it further enacted*, That a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, or where is drawn in question the validity of a statute or an authority exercised under any State, on the ground of their being repug-	SEC. 25. *And be it further enacted*, That a final judgment or decree in any suit, in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the

nant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity, or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States; and the proceeding upon the reversal shall also be the same, except that the Supreme Court may, at their discretion, proceed to a final decision of the same, and award execution or remand the same to an inferior court. (*Act Feb.* 5, 1867, 14

ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute, or commission, may be reexamined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed by the chief justice, or judge, or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for a final decision, as before provided, may at their discretion, if the cause shall have been once remand-

U. S. Laws, 386, *ch.* 28, *sec.* 2.)

ed before, proceed to a final decision of the same, and award execution; *but no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid than such as appears on the face of the record*, and immediately respects the before-mentioned questions of validity or construction of the said Constitution, treaties, statutes, commissions, or authorities in dispute. (*Act of 24th Feb.*, 1789, *ch.* 20, *sec.* 25, 1 *U. S. L.*, 86.)

By the act of 1789 no error could be considered, except such as appeared on "the face of the record." By the act of 1867 this restrictive proviso is in substance repealed.

The effect of such repeal is to enlarge the jurisdiction of this court, not in regard to the class of questions conferring jurisdiction, but as to the means of ascertaining whether the prescribed questions arose in a given case.

Under the act of 1789 this court could only ascertain from the "face of the record" whether the alleged question had arisen. The court were debarred from getting information on this point in any other way than from the "face of the record." Now, information on this point may be obtained in addition to what appears on the "face of the record" by any means or from any sources which this court may consider proper. We may well suppose that under certain circumstances affidavits may be introduced to inform this court of the questions raised in the State court. So also this court may establish some rule on the subject, providing for the manner in which questions arising under the act of 1867, and not appearing "on the face of the record," may be brought to the judicial knowledge of this court.

The act of 1867 certainly shows the intent of the law-

making power to extend gradually the jurisdiction of this court over the action of the State courts in regard to the questions specified in the said act of 1867.

We invoke the consideration of the present motion in the spirit of the act of 1867, which apparently aims at the practical extension of the jurisdiction of this court in this class of cases, and as tending to qualify some modern cases which restricted, in some particulars, the application of the appeal power of this court to decisions of the courts of the States.

C. CUSHING,
For Plaintiffs in Error.

11 Wall. 493 —